

No. 12784

2673

United States
Court of Appeals
for the Ninth Circuit.

HUNG CHIN CHING,

Appellant,

vs.

FOOK HING TONG, CHONG HING TENN and
KUI HING TENN,

Appellees.

Transcript of Record

Appeal from the Supreme Court for the
Territory of Hawaii

FILED

MAR 27 1951

PAUL J. O'BRIEN,

No. 12784

United States
Court of Appeals
for the Ninth Circuit.

HUNG CHIN CHING,

Appellant,

vs.

FOOK HING TONG, CHONG HING TENN and
KUI HING TENN,

Appellees.

Transcript of Record

Appeal from the Supreme Court for the
Territory of Hawaii

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Amendment to Brief.....	51
Answer to Fourth Amended Bill to Declare Trust and Lien, for an Accounting for Re- ceiver, and for Money Judgment.....	18
Appeal:	
Appeal and Notice of.....	50
Citation on.....	99
Motion for Leave to File Affidavit Regard- ing Jurisdictional Amount on.....	83
Notice of.....	98
Notice of Decision on.....	68
Order Allowing.....	98
Petition for.....	89
Appeal and Notice of Appeal.....	50
Appearance of Counsel.....	70
Assignment of Errors.....	90
Bill to Declare Trust and Lien for an Account- ing for Receiver and for Money Judgment..	3
Bond	86
Citation on Appeal.....	99

INDEX

PAGE

Clerk's Certificate, Supreme Court.....	400
Clerk's Minutes.....	21
Decision on Petition for Rehearing.....	77
Decision Filed August 25, 1948.....	43
Decree Filed September 2, 1948	49
Exhibits, Petitioner's:	
A —Letter Dated 10-6-41 From Wailuku, Maui, and Envelope Postmarked Wailuku, Hawaii, Oct. 6, 1941.....	130
A-1—Letter to “Dear Brother,” Dated 10-6-41, Signed “Your Brother”....	133
B —Letter From Liquor Com. of City & County of Honolulu, Addressed to Hiram L. Fong, Dated Oct. 11, 1941.	159
C —Bill of Sale Dated Oct. 20, 1941, From Elsie Young Lum to Chong Hing Tenn, Kui Hing Tenn and Fook Hing Tong.....	161
D —Copy of Statement of Co-Partnership Dated Oct. 13, 1941; of Green Mill Cafe to Treasurer of Ter. of Hawaii, Showing Names of Copartners as Kui Hing Tenn, Chong Hing Tenn and Fook Hing Tong.....	206
E —Copy of Inspector's Report Received by Liquor Com. on Oct. 10, 1941.....	210

INDEX

PAGE

Exhibits, Petitioner's—(Continued):

- F —Mortgage (Unrecorded) Dated Oct. 18, 1941, From Kui Hing Tenn, Chong Hing Tenn and Fook Hing Tong to Elsie Young Lum for \$10,-046.25, With Copy of Note in Same Amount 224
- G —Copy of Assignment of Lease Dated Oct. 30, 1941, Between Lum Kam Hoo, Assignor, and Kui Hing Tenn, Chong Hing Tenn and Fook Hing Tong, Assignees..... 227
- H —Copy of Affidavit of Publication by Hon. Advertiser Re Elsie Young Lum Giving Notice of Sale of Int. In Green Mill to Kui Hing Tenn, Chong Hing Tenn and Fook Hing Tong 232
- I —Copy of Affidavit of Publication by Hon. Advertiser Re Forming of Copartnership by Kui Hing Tenn, Chong Hing Tenn and Fook Hing Tong 233
- J —Copy of Bill of Sale Dated Oct. 10, 1941, Received by Liquor Com. Between Elsie Young Lum and Chong Hing Tenn, Kui Hing Tenn and Fook Hing Tong..... 248

INDEX

. PAGE

Exhibits, Respondents':

No. 1—Agreement of Copartnership Dated Oct. 14, 1941, Between Kui Hing Tenn, Chong Hing Tenn and Fook Hing Tong.....	146
2—Bank Statement of Bank of Hawaii, Dated Oct. 20, 1941, in Name of K. H. Tenn.....	374
3—Certified Check of Bank of Hawaii No. 1989, Dated Sept. 30, 1941, in Favor of Kam Hoo Lum.....	376
4—Check No. 643 on Bank of Hawaii, Dated Oct. 2, 1941, Payable to Kam Hu Lum, for \$10,000, Signed by K. H. Tenn.....	377
Fourth Amended Bill to Declare Trust and Lien, for an Accounting for Receiver and for Money Judgment.....	14
Motion for Leave to File Affidavit Regarding Jurisdictional Amount on Appeal.....	83
Affidavit Regarding Jurisdictional Amount	85
Affidavit in Support of Motion.....	84
Order Granting Leave to File Affidavit...	86
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	98

INDEX	PAGE
Notice of Decision on Appeal.....	68
Notice of Intention to Appeal and Motion for Order Withholding Mandate to the Circuit Court of the First Judicial Circuit, Territory of Hawaii.....	81
Affidavit of Shiro Kashiwa.....	82
Opinion of Court.....	53
Order Allowing Appeal.....	98
Order Staying Mandate to Circuit Court.....	83
Petition for Appeal.....	89
Petition for Rehearing.....	70
Praecipe for Transcript of Record to Court of Appeals	100
Proceedings	106
Receipt of Copies Certificate of Acknowl- edgment	103
Statement of Points, Designation of Parts of Record	104
Withdrawal of Counsel.....	69
Witnesses;	
Aoki, Wallace	
—direct	321

INDEX

PAGE

Witnesses—(Continued):

Centio, William	
—direct	370
Ching, Hung Chin	
—direct	279, 288, 308
—cross	311, 320
Fong, Hiram	
—direct	327
—cross	333
Hoo, Lum Kam	
—direct	267
—cross	271
—redirect	277
—recross	278
Lum, Elsie Young	
—direct	255
—cross	262
—redirect	266
Murakami, Mark Y.	
—direct	179
Nelson, Axel E.	
—direct	215
Pai, Arthur	
—direct	386
—cross	388
—redirect	391
Soares, David P.	
—direct	342

INDEX

PAGE

Witnesses—(Continued):

Tenn, Chong Hing

—direct	151, 218, 236
—redirect	242
—recross	241

Tenn, Kui Hing

—direct	171, 373
—cross	178, 378

Thompson, Henry N.

—direct	201
—cross	209
—redirect	214
—recross	213

Tong, Fook Hing

—direct	106, 343
—cross	144, 347
—redirect	150

Wong, K. C.

—direct	183
—cross	188
—redirect	189, 197
—recross	191, 200

NAMES AND ADDRESSES OF ATTORNEYS

SHIRO KASHIWA, ESQ.,

307 Hawaiian Trust Bldg.,
Honolulu, T. H.,

Attorney for appellant.

ROBERTSON, CASTLE & ANTHONY,
(T. M. WADDOUPS, ESQ.),

312 Castle & Cooke Bldg.,
Honolulu, T. H.,

Attorneys for appellees.

In the Circuit Court of the First Judicial Circuit
Territory of Hawaii

In Equity

At Chambers

HUNG CHIN CHING,

Petitioner,

vs.

FOOK HING TONG, CHONG HING TENN and
KUI HING TENN,

Respondents.

BILL TO DECLARE TRUST AND LIEN FOR
AN ACCOUNTING FOR RECEIVER AND
FOR MONEY JUDGMENT

To the Honorable, the Presiding Judge of the Above-
Entitled Court, Sitting at Chambers:

Your Petitioner Hung Chin Ching respectfully
shows:

I.

That he is a citizen of the United States and a
resident of Honolulu, City and County of Honolulu,
Territory of Hawaii.

II.

That Respondents Fook Hing Tong, Chong Hing
Tenn and Kui Hing Tenn are likewise residents of
Honolulu, City and County of Honolulu, Territory
of Hawaii.

III.

That on or about September 13, 1941, Petitioner
and Respondents, Fook Hing Tong and Chong Hing

Tenn, who were friends of long standing, conferred informally with reference to an association and combination of their resources for the purpose of engaging in the restaurant and liquor dispensing business in the City and County of Honolulu, Territory of Hawaii. That thereafter on the same day, Petitioner and Respondent Fook Hing Tong approached Kam H. Lum, proprietor of the "Green Mill," a restaurant and general liquor dispensing establishment located at 1111, 1113 and 1115 Bethel Street, [4*] in Honolulu aforesaid, as to buying said business. That said proprietor expressed a willingness to sell for Thirty Thousand Dollars (\$30,000.00), provided his wife, Elsie Lum, consented.

IV.

That later in the same evening, to wit: September 13, 1941, Petitioner, the two Respondents above named and their brother Respondent Kui Hing Tenn agreed among themselves to buy said business at the price of Thirty Thousand Dollars (\$30,000.00), if it could not be had for less, and to conduct the same as a joint adventure and further agreed and mutually promised to provide said sum as follows: Petitioner promised to contribute Three Thousand Dollars (\$3,000.00) or one-tenth (1/10th) of whatever the purchase price amounted to and Respondents promised to contribute the rest in respective amounts to be agreed upon between themselves. It was, accordingly, understood and agreed by and between the parties that Petitioner would have a one-tenth (1/10th) interest in the business

*Page numbering appearing at foot of page of original Certified Transcript of Record.

and that the Respondents would have a nine-tenth (9/10th) interest. It was further agreed between the parties hereto at the same time that Respondent Chong Hing Tenn was to have complete charge of the finances of the business, that Petitioner was to have complete charge of the sales and personnel, that Chong Hing Tenn and Petitioner, each was to receive a salary of Two Hundred and Fifty Dollars (\$250.00) per month in addition to their respective interests in the business, and that Respondents Fook Hing Tong and Kui Hing Tenn were not to participate personally in the management or conduct of the business.

V.

That thereafter on or about the 14th day of September, 1941, Kam H. Lum, the said proprietor of said business and his wife, Elsie Lum, orally agreed to assign the lease of the premises situated at 1111, 1113 and 1115 Bethel Street, in Honolulu aforesaid and to sell [5] their said business known as the "Green Mill," inclusive of trade name and good-will, to Petitioner and Respondents who in turn agreed to buy the same for the sum of Twenty-five Thousand Dollars (\$25,000.00). That said real property covered under said lease is more particularly described as follows:

That certain parcel of land situated at 1111, 1115 and 1119 Bethel Street, in Honolulu, City and County of Honolulu, Territory of Hawaii, having a frontage of 63 feet on Bethel Street and a depth of approximately 54 feet and containing an approximate area of 3054 square feet more or less.

The said proprietor and his wife, Elsie Lum, voluntarily consented to a trial operation of said business by Petitioner and Respondents until October 1, 1941, at which time the purchase price was to be payable, if the buyers were satisfied with the experiment and with the further understanding that the proceeds of the business collected by Petitioner and Respondents during the trial period were to become their property, if they purchased said business and leasehold.

VI.

That in the negotiations for the purchase of the aforesaid business and leasehold Petitioner exerted a controlling influence because of his long acquaintance and friendship with said proprietor and because of said proprietor's confidence in him.

VII.

That on or about September 16, 1941, Petitioner and Respondent Chong Hing Tenn, on behalf of themselves and Respondents, Fook Hing Tong and Kui Hing Tenn took charge of the aforesaid business and conducted the same under the aforesaid plan for division of management, and under the aforesaid trial arrangement with the said proprietor. That the business prospered beyond the greatest expectations of Petitioner and Respondents, confirming their decision [6] to buy the same.

VIII.

That on or about October 1, 1941, without the knowledge of or notice to Petitioner and pursuant

to and in execution of the aforesaid oral contract between said Kam H. Lum and Elsie Lum on the one hand and Petitioner and Respondents herein on the other, Respondents procured a transfer of said business and the lease of the said premises in their own names and with their own funds.

IX.

That Petitioner was at all times ready, willing and able to contribute his portion of the purchase price of said business. That Petitioner expected and was waiting to be notified when to make his contribution, since the Respondents were to attend to the formal consummation of the deal. That since all dealings between the parties had been informal and characterized by mutual confidence, Petitioner was neither suspicious nor vigilant.

X.

That Petitioner is advised in this connection of the availability to the Seller of the Statute of Frauds as a defense to said oral contract of sale, but that since the Seller did not avail himself of said right before the consummation of said Sale, such defense did not affect the rights of the Petitioner and Respondents thereunder or the equitable interest of the Petitioner in the legal title to the subject matter of the contract which the Respondents acquired in the performance and execution of said contract.

XI.

That on or about October 6, 1941, upon Petition-

er's complaint to Respondent Fook Hing Tong that Respondent Chong Hing Tenn was encroaching upon his, Petitioner's duties as agreed upon, Respondent Fook Hing Tong took occasion to reassure Petitioner of his interest in said business to the extent of Three Thousand Dollars (\$3,000.00). That [7] at the same time, on or about October 6, 1941, Respondent Fook Hing Tong remonstrated with Respondent Chong Hing Tenn as to the matter of Petitioner's said complaint and reminded said Respondent Chong Hing Tenn of Petitioner's part in the joint adventure, referring expressly to the aforesaid oral agreements with respect thereto. That thereafter said Respondent Chong Hing Tenn apparently respected said oral agreements between the parties and accepted Petitioner and his services in accordance therewith.

XII.

That on or about October 11, 1941, Petitioner was informed that articles of partnership among Respondents were about to be prepared to the exclusion of Petitioner. That whereupon Petitioner again conferred with Respondent Fook Hing Tong, and said Respondent again assured Petitioner that the aforesaid oral agreement between the parties would be respected. That upon said assurance, Petitioner continued in the joint management of said business with Respondent Chong Hing Tenn according to the said agreement.

XIII.

That on or about October 20, 1941, Respondents

procured a license to operate said business without notifying Petitioner thereof and omitting Petitioner as Licensee.

XIV.

That on or about October 30, 1941, Respondents entered into articles of partnership and excluded Petitioner from the business.

XV.

That Petitioner received no part of the proceeds of said business which amounted to in excess of Twenty Thousand Dollars (\$20,000.00) during his joint management thereof with Respondent Chong Hing Tenn between September 15, 1941, and October 30, 1941. That said sum was largely profit, since cost of operation was relatively small. That Respondents have continued to operate said [8] business from the time of Petitioner's expulsion to the present time. That they appropriated to their own use not only the trade name "Green Mill," and the good-will of the business both of which were and are of great value, but also appropriated the said leasehold covering said premises. That although their profits have been substantial, they have not accounted to Petitioner for his interest therein or paid him any part thereof.

XVI.

That the matters, the discovery of which is hereinafter prayed, are within the exclusive knowledge of this Respondents, that such matters are not accessible to the Petitioner and are essential to

the prosecution of Petitioner's claim against the Respondents herein asserted.

XVII.

Petitioner is advised and states that the negotiations, agreements, dealings and course of conduct on the part of the parties hereto, set forth above, constituted the parties joint adventurers or partners.

XVIII.

Petitioner is advised and states that in contemplation of equity, Respondents purchased the above-mentioned business and leasehold for the joint use and benefit of themselves and Petitioner and that said leasehold and said business and the profits therefrom in the possession or control of Respondents, in whatever form, are impressed with a trust for the use and benefit of Petitioner to the extent of his interest therein.

XIX.

Petitioner is advised and states that, independently of said trust, he has an equitable lien on said business and leasehold by virtue of the relationship existing and continuing between himself and the Respondents, as aforesaid, to secure his [9] interest in said business and leasehold and the profits therefrom.

XX.

That although Petitioner is ready, willing and able to make a tender to Respondents of the amount of his agreed contribution to the enterprise, the value of his interest therein is greatly in excess

of said amount and Respondents would not disgorge to the extent thereof upon such tender.

XXI.

Petitioner is advised and states that Respondents are jointly and severally liable to him for his interest in said business and leasehold and the profits therefrom prior to his said expulsion and during the subsequent continuance of said business by the Respondents.

XXII.

That this is the first application for a receiver in this cause.

Wherefore, Petitioner prays:

(1) That process issue and be served on the Respondents, as provided by law, requiring them to appear and to plead, answer or demur to Petitioner's petition.

(2) That an accounting be had between Petitioner and Respondents.

(3) That the amount of Respondents' obligation to Petitioner be determined by the Court and that Petitioner have judgment against Respondents jointly and severally for the amount so determined.

(4) That Respondents answer under oath disclosing their respective contributions to the purchase of the business known as "Green Mill" and the leasehold referred to the petition and disclosing further, their respective interest in said business and the proportionate division of profits therefrom among themselves.

(5) That Respondents answer under oath stating the gross income and net income from the aforesaid business for each of the [10] following periods:

(a) Between September 16, 1941, and October 1, 1941.

(b) The month of October, 1941.

(c) Between November 1, 1941, and the present time.

(6) That Respondents answer under oath, stating separately the application of the net income from said business during each of said periods above denominated as a, b and c.

(7) That a lien be declared and fixed, securing Respondents' obligations to Petitioner, on the leasehold held by the Respondents and more particularly described in the petition whether under a new lease or net, and on the net profits from said business since September 16, 1941, to the present time, in the possession or control of Respondents in whatever form they are or may have been converted into.

(8) That the Court adjudge that Respondents hold in trust for Petitioner to the extent of his interest as determined by the Court the aforesaid leasehold whether under a new lease or not and the good-will and trade name of the business, known as the "Green Mill," conducted by Respondents on the premises.

(9) That the Court likewise adjudge that the Respondents hold in trust the net profit accruing

from said business since September 16, 1941, to the present time, in whatever form they may have been converted into, for the use and benefit of the Petitioner to the extent of his interest therein as determined by the Court.

(10) That a receiver be appointed for the "Green Mill," referred to in the petition and for the property more particularly described in the petition on which the business known as "Green Mill," is conducted.

(11) That Petitioner have such further and general relief as he may be entitled in the premises.

/s/ HUNG CHIN CHING. [11]

Territory of Hawaii,
City and County of Honolulu—ss.

Hung Chin Ching, being duly sworn on oath deposes and says: That he has read the foregoing petition, is familiar with its contents and that the same are true.

/s/ HUNG CHIN CHING.

Subscribed and sworn to before me this 3rd day of April, A.D., 1944.

/s/ ETHEL M. IZUMI,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1945.

[Endorsed]: Filed April 5, 1944. [12]

[Title of Court and Cause.]

FOURTH AMENDED BILL TO DECLARE
TRUST AND LIEN, FOR AN ACCOUNT-
ING, FOR RECEIVER AND FOR MONEY
JUDGMENT

Comes now Hung Chin Ching, your Petitioner above named, and leave of court having been heretofore had, amends his Bill to Declare a Trust, etc., on file herein, as follows:

I.

That allegations (I-XIV) contained in the original Bill to Declare Trust, etc. on file herein are herewith incorporated by reference and made a part hereof.

II.

That with reference to the matter of tender, it was expressly agreed from the beginning of Petitioner's negotiations with Respondents to the time of his expulsion from business, that is, from September 13, 1941, to October 31, 1941, Respondents were to attend to all financial arrangements and notify Petitioner when to pay his part and that Petitioner was at all times ready, able, and willing to do so.

Petitioner further states that, prompted by the prospect of large profits, Respondents not only failed to notify and permit Petitioner to pay his part, but that they [13] fraudulently circumvented Petitioner and consummated the deal to the exclusion of the Petitioner. Petitioner states, therefore, that

he was excused from paying his part and relieved of any penalty for his failure to do so. Petitioner reiterates that he and Respondents negotiated to settle his claim against Respondents until as late as January, 1943, when Respondent, Fook Hing Tong, promised to compensate Petitioner in his claim in the course of which negotiations, Petitioner's agreed contribution was taken into account. That because of Petitioner's friendship and faith in the said Fook Hing Tong, who was and still is a physician well respected in the community, Petitioner was lulled into a false belief that he, Fook Hing Tong, would convince the remaining Respondents to do the right thing by Petitioner. That in the early part of 1944, Petitioner was finally convinced that Respondents, because of the large profits involved, would not keep their promise and accordingly took legal steps to protect his rights. Respondents are estopped now to set up Petitioner's failure to pay his part or tender the same.

Petitioner further states that after fraudulently preventing Petitioner from paying his part as aforesaid, and after fraudulently acquiring and retaining his corresponding interest in the business because of the unexpected mounting profits, Respondents would not have accepted a tender from Petitioner of his agreed contribution, which was relatively nominal in view of the large proportions to which the business grew.

III.

That allegations XV-XXI contained in said original Bill to Declare a Trust are herewith incor-

porated by reference and made a part hereof. [14]

IV.

Petitioner states with reference to his delay in filing this, his suit, against Respondents herein, that he understood that it was impossible to file the same during the time between December 7, 1941, and March 10, 1943; that Courts of the Territory, having jurisdiction of Petitioner's cause of action herein set forth, were physically closed for the time immediately following December 7, 1941; that on December 19, 1941, said Courts were restrained from exercising jurisdiction over Petitioner's said cause of action by orders of the Military Governor; that on March 10, 1943, said restraint was lifted by order of said Military Governor.

Petitioner further states that he knew the Courts were closed as aforesaid and that he did not know they were opened until March 10, 1943, when they were opened as aforesaid, by the order of the Military Governor. Petitioner has learned, however, since the filing of his suit herein that another order of the Military Governor of January 27, 1942, was promulgated which may have lifted the restraint of said order of December 19, 1941, sufficiently for this Court to entertain his suit. But Petitioner repeats that he knew nothing of said order of January 27, 1942.

Petitioner believes and states that his ignorance of the status of the Courts in the Territory was excusable; that it was shared by the people of the Territory generally, Petitioner points to his said

excusable ignorance and the general confusion of all the people of the Territory on the subject in explanation of why he thought it was impossible to file this suit against Respondents.

Your Petitioner is advised and states that if, nevertheless, he is barred by his delay in bringing his suit, he is barred only to the extent of claiming profits [15] accrued in the business involved subsequent to his expulsion therefrom; that Petitioner's claim to his interest in the proceeds of said business from September 16, 1941, to October 31, 1941, and to his interest in the business itself and the leasehold in question as of the date of Petitioner's expulsion from the business is not affected by Petitioner's said delay in bringing suit.

IV.

That the allegations for relief contained in Paragraph XXII of the said original Bill to Declare a Trust be incorporated herein by reference and made a part hereof.

Dated: Honolulu, T. H., this 4th day of November, A. D., 1947.

/s/ HUNG CHIN CHING,
Petitioner.

Territory of Hawaii,
City and County of Honolulu—ss.

Hung Chin Ching, being duly sworn on oath, deposes and says: That he has read the foregoing

Fourth Amended Bill to Declare Trust and Lien, for an Accounting, for Receiver and for Money Judgment, is familiar with its contents and that the same are true.

/s/ HUNG CHIN CHING.

Subscribed and sworn to before me this 4th day of November, 1947.

/s/ EVA R. HART,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1949.

(SEAL)

Filed November 5, 1947.

Returned November 7, 1947. [16]

[Title of Court and Cause.]

ANSWER TO FOURTH AMENDED BILL TO
DECLARE TRUST AND LIEN, FOR AN
ACCOUNTING FOR RECEIVER, AND
FOR MONEY JUDGMENT

Come now Fook Hing Tong, Chong Hing Tenn and Kui Hing Tenn, respondents above named, and answering the Fourth Amended Bill herein allege as follows:

I.

That they admit paragraphs I and II of said amended bill.

II.

That they deny the allegations contained in paragraphs III to XIV, inclusive, of the original bill as incorporated in the fourth amended bill.

III.

That they deny the allegations contained in paragraph II of the fourth amended bill, and allege that there [18] was at no time consummated any agreement for partnership or a partnership between petitioner and respondents; that no tender of any kind was ever made by petitioner for the purchase of any share of the business of respondents; that there were no negotiations towards settlement of any rights of petitioner because petitioner at no time secured or had any right in and to the business of respondents, or the profits therefrom; and that respondents had at all times acted in good faith with petitioner.

IV.

That they deny paragraphs XV to XXI, inclusive, of said original bill as incorporated in said fourth amended bill.

V.

That petitioner is guilty of laches in the premises, and his bill sets forth an alleged agreement which **is violative of the statute of frauds**, and has failed to state a cause of action in equity; and if he has any cause of action, there is a plain, speedy and adequate remedy at law.

Wherefore respondents pray that the fourth

amended bill be dismissed and that they go hence with their costs.

Dated: Honolulu, T. H., June 16th, 1948.

/s/ FOOK HING TONG,

/s/ CHONG HING TENN,

/s/ KUI HING TENN. [19]

Territory of Hawaii,
City and County of Honolulu—ss.

Fook Hing Tong, Chong Hing Tenn and Kui Hing Tenn, being first duly sworn, upon oath depose and say that they are the respondents named in the foregoing answer; that they have read the said answer, know the contents thereof, and that the same is true.

/s/ FOOK HING TONG,

/s/ CHING HING TENN,

/s/ KUI HING TENN.

Subscribed and sworn to before me this 16th day of June, 1948.

/s/ CHARLES Y. AWANA,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires: June 30/49.

Filed June 16, 1948. [20]

At Term: Tuesday, July 3, 1945.

Present: Hon. John Albert Matthewman,
Fifth Judge presiding.

[Title of Cause.]

HEARING ON DEMURRER TO
AMENDED BILL

2:29 p.m. The Court having been in session the above matter was duly called.

Mr. Waddoups referred to the minutes in the above matter of the proceedings held before Judge Cristy on May 19, 1944, at which time Judge Cristy sustained a demurrer filed by the respondents.

Upon the showing made the Court inferred that inasmuch as this matter had been before Judge Cristy, that according to the procedure followed in this circuit, the above matter should properly be argued before Judge Cristy, he having heard argument on the prior demurrer.

Counsel in the matter agreed that the demurrer to the amended bill, filed herein, should be heard by the presiding judge of the second division of this court.

Upon the agreement of counsel the Court ruled that the demurrer in question be referred to the second division of this court and the Court further intimated that should the said presiding judge decline to hear the demurrer that this court will hear same.

/s/ GEORGE KAHOIWAI,
Clerk. [21]

At Term: Tuesday, November 13, 1945.

Present: Hon. John Albert Matthewman,
Fifth Judge Presiding.

[Title of Cause.]

MOTION TO SET

Upon the request of Mr. Lee, hearing on the demurrer to the Second Amended Bill was set for Thursday, November 29, 1945, at 10:00 a.m.

/s/ ROGER P. WHITMARSH,
Clerk.

At Term: Thursday, November 29, 1945.

Present: Hon. John Albert Matthewman,
Fifth Judge Presiding.

[Title of Cause.]

MINUTE ORDER

Counsel were informed that hearing on the demurrer to the Second Amended Bill, which was set for this time, cannot be taken up now due to a trial now in progress, L. No. 16653, Territory of Hawaii v. John Waterhouse, et al. (Fisheries case).

This matter was taken off the calendar, subject to being moved on at the earliest possible date.

/s/ ROGER P. WHITMARSH,
Clerk. [22]

Friday, July 19, 1946

The Court convened at 9:30 a.m. at chambers in term.

Present: Hon. Carrick H. Buck,
Judge, Presiding.

[Title of Cause.]

ARGUMENT ON DEMURRER
SET FOR JULY 31, 1946

Upon the request of counsel for the Petitioner and for the Respondent, the Court set Wednesday, July 31, 1946, at 9:30 a.m., for argument on demurrer.

/s/ MERLE UEHLING,
Clerk.

At Chambers: 9:30 o'Clock a.m., Wednesday, July 31, 1946.

Present: Hon. Carrick H. Buck,
First Judge, Presiding.

CONTINUANCE FOR
HEARING ON DEMURRER

Counsel for Respondents stated to the Court that the Original Bill to Declare Trust and Lien for an Accounting for Receiver and for Money Judgment was filed in this Court on the 5th day of April, 1944; that the matter came up for argument before the Hon. A. M. Cristy on Demurrer filed by the

Respondents, at which time the Court sustained the Demurrer; that subsequently an Amended Bill was filed on May 29th, 1944, to which Amended Bill Respondents filed again a Demurrer; this second Demurrer came on for hearing before the Honorable John Albert Matthewman, and said Demurrer was sustained by the Court on a technical question of pleading and did not consider the substance of the Bill itself.

There being no record in the files to show on which grounds the first Demurrer to the original Bill was sustained by the Hon. A. M. Cristy, the Court requested that Counsel submit a written transcript of the Reporter's notes on the hearing on said Demurrer, and continued the hearing on the present Demurrer to Second Amended Bill until moved on.

By Order of the Court:

/s/ O. SEZENEVSKY,
Clerk. [23]

At Terms: Monday, Oct. 6, 1947, 1:30 p.m.

Present: Hon. Willson C. Moore,
Fourth Judge, Presiding.

[Title of Cause.]

MOTION TO SET (DEMURRER)

The Court ordered argument on Demurrer set for
1:30 p.m. Thurssday, October 16, 1947.

By Order of the Court:

/s/ JOSEPH L. COCKETT,
Clerk.

At Term: Thursday, October 16, 1947, 10:06 a.m.

Present: Hon. Martin Pence,
Assigned Judge, Presiding.

[Title of Cause.]

ARGUMENT ON DEMURRER

The Court convened at 10:06. Mr. Waddoups
argued.

At 10:08 the Court asked Mr. Lee to point out
what new positions are pointed out in the second
amended complaint.

Mr. Lee argued.

At 10:10 Mr. Waddoups continued with his argu-
ment.

At 10:14 Mr. Lee argued.

At 10:29 the Court referred to Judge Cristy's
ruling on the original demurrer.

The Court, after hearing argument, sustained the demurrer on the grounds of laches as shown in the second amended bill.

The Court asked Mr. Lee if he wanted to time to answer.

Mr. Lee took an exception to the Court's ruling and informed the Court that he is noting an appeal.

The Court recessed at 10:33.

At 10:51 the Court ordered the following entered in the Minutes: The Court: At the request of Mr. Lee (Mr. Lee being present in Chambers) I phoned Mr. Waddoups, advising him that Mr. Lee had requested twenty days within which to file another amended bill. Mr. Waddoups advised me and by the same phone advised Mr. Lee (three minutes ago) that he had no objections. So it is ordered that the petitioner herein shall have twenty days to file another amended bill.

By Order of the Court:

/s/ JOSEPH L. COCKETT,
Clerk. [24]

Original demurrer was sustained by Judge Cristy, after argument on May 19, 1944, "on the grounds that there is no partnership alleged sufficiently to be enforced as a matter of Equity." (Taken from reporter S. H. Mins' notes.) [25]

At Term: Tuesday, Dec. 2, 1947, 1:37 p.m.

Present: Hon. John E. Parks,
Third Judge, Presiding.

[Title of Cause.]

MOTION TO SET (DEMURRER)

Counsel met with the Court in Chambers at 1:37 p.m.

By agreement, the Court set this cause for argument on demurrer at 9:00 a.m. Friday, December 12, 1947.

By Order of the Court:

/s/ JOSEPH L. COCKETT,
Clerk.

At Term: Friday, Dec. 12, 1947, 9:00 a.m.

Present: Hon. John E. Parks,
Third Judge, Presiding.

[Title of Cause.]

ARGUMENT ON DEMURRER

At 9:00 a.m. Counsel met in Chambers with the Court for argument on Demurrer.

Mr. Waddoups argued.

At 9:02 Mr. Lee argued.

At 9:09 Mr. Waddoups argued, citing 16 Haw. at 80.

At 9:14 argument by Mr. Lee.

At 9:17 Mr. Waddoups argued, citing 10 Haw. 395; 6 Haw. 160.

At 9:20 argument by Mr. Lee.

At 9:32 argument by Mr. Waddoups.

The Court allowed counsel to file memorandum of authorities, allowing Mr. Lee ten days and Mr. Waddoups five days thereafter.

By Order of the Court:

/s/ JOSEPH L. COCKETT,
Clerk. [26]

At Term: Tuesday, June 15, 1948, at 1:30 p.m.

Present: Hon. W. C. Moore,
Fourth Judge, Presiding.

[Title of Cause.]

SETTING

Mr. Waddoups not present. Mr. Lee, present.

The Court set the matter for hearing on June 21, 1948, at 9:00 a.m. Mr. Waddoups notified.

By Order of Court:

/s/ R. A. LYNN,
Clerk. [27]

At Term: Monday, June 21, 1948, at 9:00 a.m.

Present: Hon. W. C. Moore,
Fourth Judge, Presiding.

Counsel:

HERBERT K. H. LEE, ESQ.,
Counsel for Petitioner.

ROBERTSON, CASTLE & ANTHONY, by
T. M. WADDOUPS, ESQ.,
Counsel for Respondents.

DAVID R. CASTLEMAN, JR.,
Associated with Herbert K. H. Lee,
Counsel for Petitioner.

[Title of Cause.]

TRIAL

Case for Petitioner

9:00 a.m.—Both sides being ready to proceed, Mr. Lee informs the Court as to the basis of the petition.

9:28 a.m.—Fook Hing Tong, M.D., called as an adverse witness, under the Statute.
Direct examination by Mr. Lee.

10:00 a.m.—Court Recessed.

10:10 a.m.—Reconvened.

10:10 a.m.—Direct examination by Mr. Lee continued.

10:25 a.m.—Letter directed to Mr. H. C. Ching, together with envelope, dated October 6, 1941, closing “Aloha Bear,” and copy

of letter directed to "Dear Brother," dated 10/6/41, closing "Your Brother," received and marked Petitioner's Exhibits "A" and "A-1," respectively, for Identification.

10:28 a.m.—Letters described above received in evidence and marked Petitioner's Exhibits "A" and "A-1" in Evidence.

10:30 a.m.—All witnesses who are not parties to the action are ordered to remain without the hearing of the Court.

10:45 a.m.—Cross-examination of Fook Hing Tong by Mr. Waddoups.

10:50 a.m.—Document dated October 14th, 1941, identified by the witness as an Agreement of Copartnership between him and his two brothers for the carrying on of a restaurant and liquor business, received in evidence and marked Respondent's Exhibit I.

10:50 a.m.—Redirect examination by Mr. Lee.

10:52 a.m.—Chong Hing Tenn, called as adverse witness by Mr. Lee.

Direct examination by Mr. Lee.

11:00 a.m.—Court Recessed.

11:10 a.m.—Reconvened.

11:11 a.m.—Direct examination by Mr. Lee continued.

Letter dated October 11, 19, directed to Hiram Fong, Esq., stating that the Liquor Commission had granted the liquor license on October 10, 1941, identified by the witness.

11:18 a.m.—Letter described above received in evidence and marked Petitioner's Exhibit "B" in Evidence. [28]

11:20 a.m.—Bill of Sale dated October 20, 1941, received in evidence and marked Petitioner's Exhibit "C" in Evidence.

Copy of Co-partnership filed with the Territorial Treasurer's Office certifying that on October 1, 1941, the three brothers named herein entered into partnership for the purpose of carrying on a restaurant and liquor business identified by the witness but Not Offered in Evidence.

11:37 a.m.—No cross-examination.

11:38 a.m.—Kui Hing Tenn, called as an adverse witness.

Direct examination by Mr. Lee.

11:40 a.m.—Cross-examination by Mr. Waddoups.

11:50 a.m.—Court Adjourned, and the matter is continued for further hearing to tomorrow, June 22, 1948, at 8:45 a.m.

By Order of Court:

/s/ R. A. LYNN,

Clerk.

At Term: Tuesday, June 22, 1948, at 8:45 a.m.

8:50 a.m.—Mark Y. Murakami, sworn and testified.

Direct examination by Mr. Lee.

Mr. Waddoups objects to questioning the witness concerning the intent of the

petitioner to purchase the Pearl Inn, as being incompetent, irrelevant and immaterial.

Objection is sustained by the Court.

9:00 a.m.—K. C. Wong, owner of the Riverside Grill, sworn and testified.

Direct examination by Mr. Lee.

Mr. Waddoups objects to the line of questioning unless it can be tied in with this case. Testimony is admitted subject to motion to strike.

9:09 a.m.—Cross-examination by Mr. Waddoups.

9:11 a.m.—Redirect examination by Mr. Lee.

9:12 a.m.—Objection by Mr. Waddoups to leading questions is sustained. A further objection by Mr. Waddoups to the leading questions was overruled by the Court, and permitted as merely refreshing the memory of the witness.

9:13 a.m.—Recross-examination by Mr. Waddoups. Motion to Strike all testimony as to Mr. Ching's interest in the Green Mill Cafe, as it is self-serving declaration on the witness' own statement—denied.

9:23 a.m.—Redirect examination by Mr. Lee.

9:25 a.m.—Recross-examination by Mr. Waddoups.

9:27 a.m.—Henry N. Thompson, Executive Secretary of the Liquor Commission, City and County of Honolulu, sworn and testified.

Direct examination by Mr. Lee.

9:37 a.m.—Court Recessed.

9:45 a.m.—Reconvened.

9:45 a.m.—Direct examination of Henry N. Thompson by Mr. Lee continued.

Copy of Statement of Co-Partnership dated October 13, 1941, between the three respondents, received in evidence and marked Petitioner's Exhibit "D."

Copy of Inspector's Report dated October 10, 1948, identified by the witness (report taken from the record of the Liquor Commission) and offered in evidence.

9:47 a.m.—Objection by Mr. Waddoups.

Cross-examination by Mr. Waddoups.

9:50 a.m.—Copy of Report received in evidence and marked Petitioner's Exhibit "E" in Evidence.

9:51 a.m.—Further cross-examination by Mr. Waddoups.

9:54 a.m.—Motion by Mr. Lee to strike answers to the last two questions as incompetent, irrelevant and immaterial, overruled by the Court.

9:55 a.m.—Redirect examination by Mr. Lee.

9:56 a.m.—Lt. Axel E. Nelson, Honolulu Police Department, sworn and testified.

Direct examination by Mr. Lee.

10:00 a.m.—Motion by Mr. Waddoups to strike testimony relative to the liquor business because it had not been shown to relate to this particular business, overruled.

10:01 a.m.—Chong Hing Tenn recalled.

Redirect examination by Mr. Lee.

Mortgage and note on the Green Mill identified by the witness. Witness instructed to produce the cancelled check for \$10,000 paid as his share of the purchase price, if it can be found, at request of Mr. Lee.

10:10 a.m.—Copy of Mortgage and Note dated October 18, 1941, received in evidence and marked Petitioner's Exhibit "F."

10:11 a.m.—Copy of Assignment of Lease, dated October 2, 1941, received in evidence and marked Petitioner's Exhibit "G."

10:11 a.m.—Affidavit of Publication by the owner, Elsie Lum, that she had sold her business as of October 1, 1941, received in evidence and marked Petitioner's Exhibit "H."

10:11 a.m.—Affidavit of Publication of Partnership Notice, received in evidence and marked Petitioner's Exhibit "I."

10:14 a.m.—Court Recessed.

10:23 a.m.—Reconvened.

10:23 a.m.—Chong Hing Tenn resumes the stand. Further redirect examination by Mr. Lee.

Affidavit attached to a file submitted to the witness for identification—identified. Mr. Waddoups objects to its introduction in evidence and the objection was sustained.

- 10:33 a.m.—Recross-examination by Mr. Waddoups.
- 10:34 a.m.—Redirect examination by Mr. Lee.
- 10:43 a.m.—Copy of Bill of Sale Dated October 10, 1941, on file with the Liquor Commission, received in evidence and marked Petitioner's Exhibit "J."
- 10:55 a.m.—Elsie Young Lum, former owner of the Green Mill Cafe, with her husband, sworn and testified.
- 10:55 a.m.—Direct examination by Mr. Lee.
- 11:10 a.m.—Cross-examination by Mr. Waddoups.
- 11:15 a.m.—Redirect examination by Mr. Lee.
- 11:16 a.m.—Court Recessed. [30]
- 11:25 a.m.—Court Reconvened.
- 11:26 a.m.—Lum Kam Hoo, husband of Elsie Young Lum, sworn and testified.
Direct examination by Mr. Lee.
- 11:34 a.m.—Cross-examination by Mr. Waddoups.
- 11:43 a.m.—Redirect examination by Mr. Lee.
- 11:44 a.m.—Recross-examination by Mr. Waddoups.
- 11:45 a.m.—Hung Chin Ching, Petitioner, sworn and testified. (Police Officer, City & County of Honolulu.)
Direct examination by Mr. Lee.
- 11:47 a.m.—Mr. Waddoups moves to strike testimony where it was mentioned that the elderly father of the respondents said he thought the Petitioner should go into partnership with them. Motion Is Granted and Testimony Stricken.

12:00 M. —Court Recessed, to reconvene at 8:45 a.m., tomorrow, June 23, 1948.

By Order of Court:

/s/ R. A. LYNN,
Clerk.

At Term: Wednesday, June 23, 1948, at 8:45 a.m.

8:45 a.m.—Both sides ready to proceed, Hung Chin Ching resumes the witness stand, for continued direct examination.

9:23 a.m.—No cross-examination by Mr. Waddoups.

9:23 a.m.—Court Recessed.

9:35 a.m.—Reconvened.

9:35 a.m.—Continued direct examination of Hung Chin Ching by Mr. Lee.

9:45 a.m.—Cross-examination by Mr. Waddoups.

10:02 a.m.—No redirect examination.

10:05 a.m.—Cross-examination by Mr. Waddoups continued.

10:07 a.m.—Wallace Aoki, Bookkeeper and cashier for Hawaii Meat Company, sworn and testified.

Stipulated by and between counsel that evidence on the accounting be continued until such time as the Court determines whether an accounting should be had, and approved by the Court. Mr. Aoki is excused without prejudice and may be recalled if necessary.

10:09 a.m.—Court Recessed.

10:19 a.m.—Reconvened.

10:20 a.m.—Mr. Waddoups moves to dismiss the Amended Bill and any bills incorporated by reference in it, and that the respondents may go hence with their costs, on the grounds that there has not been given to the Court that type of action which is contemplated in the Equity jurisprudence; cites the case of *Lucas vs. American Hawaiian Engineering & Construction Company*, 16 Haw. 80, Page 87; *Magoon vs. Engineering Company*, 22 Haw. 3271 and 25 Haw. 194. Further, that the petitioner is guilty of laches.

10:38 a.m.—Argument by Mr. Lee, citing the Hawaii case of *E. E. Black vs. Lord and McCandless*, 13 Haw. 507, *Blaisdell vs. Burns*; reads from 2 Haw. 436, and further cites 136 Pac. 2, Page 651; 11 A.L.R., 432-434 concerning contribution; 48 A.L.R. 1058, 63 A.L.R., 9091 and concerning laches—*American Jurisprudence*, Sections 333, 334 and [31] 335.

11:20 a.m.—Court Recessed.

11:40 a.m.—Reconvened.

11:40 a.m.—Mr. Waddoups' answering argument.

11:45 a.m.—By the Court: This being a Motion to Dismiss on the grounds that there is no proof to substantiate the allegations of

the petitioner, therefore the petitioner is not entitled to any relief at this time. The Court in this situation has to look on the evidence in its best light, and with this end in view this Court at this time will overrule the Motion to Dismiss.

11:50 a.m.—Court Recessed to reconvene tomorrow, Thursday, June 24, 1948, at 8:45 a.m.

By Order of Court:

/s/ R. A. LYNN,
Clerk.

At Term: Tuesday, June 24, 1948, at 8:45 a.m.

Case for Respondents

8:45 a.m.—Hiram L. Fong, sworn and testified.
Direct examination by Mr. Waddoups.

8:52 a.m.—Mr. Lee is permitted to question the witness briefly.

8:54 a.m.—Continued direct examination by Mr. Waddoups.

8:59 a.m.—Cross-examination by Mr. Lee.

9:17 a.m.—David P. Soares, Deputy High Sheriff, Territory of Hawaii, sworn and testified.

Direct examination by Mr. Waddoups, as to service of subpoena on Arthur Pai.

9:19 a.m.—Dr. Fook Hink Tong, Respondent, sworn and testified.

Direct examination by Mr. Waddoups.

- 9:29 a.m.—Cross-examination by Mr. Lee.
- 9:46 a.m.—Court recessed.
- 10:00 a.m.—Court reconvened.
- 10:00 a.m.—Continued cross-examination by Mr. Lee.
- 10:04 a.m.—Mr. Castleman carries on cross-examination of the witness for Mr. Lee; no objection by opposing counsel.
- 10:25 a.m.—Kui Hing Tenn, Respondent, sworn and testified.
- 10:30 a.m.—Direct examination by Mr. Waddoups.
- 10:33 a.m.—Bank statement of Bank of Hawaii, dated October 10, 1941, showing account of the witness, received and marked Respondent's Exhibit II for Identification.
- 10:34 a.m.—Bank statement received in evidence and marked Respondent's Exhibit II in Evidence.
- 10:35 a.m.—Check on the Bank of Hawaii, No. 1989, in the sum of \$15,000.00 (certified) to Kam Hoo Lum, received in evidence and marked Respondent's Exhibit III.
- 10:36 a.m.—Check on the Bank of Hawaii, No. 643, in the sum of \$10,000.00, to Kam Hu Lum, received in evidence and marked Respondent's Exhibit IV in Evidence.
- 10:44 a.m.—Mr. Waddoups requests a continuance for the purpose of completing evidence, and makes offer of proof now—
That some time after the "blitz," at a time when the bars were closed, the petitioner, Ching, stated to Arthur Pai

that it was a lucky thing he had not put any money in the Green Mill; and asks the case be continued until Mr. Pai can be produced.

The Court ordered a new subpoena be issued for Mr. Pai, returnable at 8:30 a.m. the first secular day after service, and that the Sheriff to whom it is given report to counsel in town, who will notify Mr. Castleman at Wahiawa. As soon as the witness is served, a date for further hearing will be agreed upon by counsel.

10:50 a.m.—Court Recessed.

By Order of Court:

/s/ R. A. LYNN,
Clerk.

At Term: Saturday, June 26, 1949, at 8:30 a.m.

8:34 a.m.—Arthur Pai was sworn and testified.

Direct examination by Mr. Waddoups.

8:38 a.m.—Cross-examination by Mr. Lee.

8:44 a.m.—Mr. Waddoups interposes a question.

8:44 a.m.—Cross-examination by Mr. Lee continued.

8:46 a.m.—Redirect examination by Mr. Waddoups.

9:00 a.m.—Court Recessed to reconvene on Friday, July 2, 1948, at 9:00 a.m., for further trial of this case.

By Order of Court:

/s/ R. A. LYNN,
Clerk. [33]

At Term: Friday, July 2, 1948, at 9:00 a.m.

9:02 a.m.—Chong Hing Tenn, sworn previously as a witness for the Petitioner, testified. Direct examination by Mr. Waddoups. Objection by Mr. Lee to testimony of the witness concerning a conversation alleged to have been had between Chong Hing Tenn and Arthur Pai in an effort to impeach the former witness, Pai, is sustained by the Court.

It was Stipulated by and between counsel that the Fair on Maui in 1941 was held on October 9th, 10th and 11th.

9:14 a.m.—Respondents Rest.

Hung Chin Ching recalled.

9:14 a.m.—Redirect examination by Mr. Lee.

9:18 a.m.—Petitioner Rests.

9:18 a.m.—Argument by Mr. Lee.

9:40 a.m.—Argument by Mr. Castleman who cites various authorities mentioned in his brief on file in this case—

Menefee v. Oxnam, Cal. 183 P. 379.

Latimer v. Piper, 261 Mich. 123 and

Turtur v. Isserman, 128 Atlantic 151.

Linn v. Weber, 134 Pac. 461.

McDonough v. Saunders, Ala. 78 So. 160.

An Iowa case in 255 N. W.

Wharff case in 2 Haw. 436.

Miller vs. Walser, 181 Pac. 437.

In re Nelson, 26 Haw. (Laches).

In re Ishida, 34 Haw. 363.

Levy vs. Love.

Houghtailing vs. Dela Nux, 25 Haw. 438.

Hearst vs. Kukui, 25 Haw.

Bertelmann vs. Lucas, a Hawaiian case,
and Ulrich vs. Hite.

10:08 a.m.—Court Recessed.

10:20 a.m.—Court Reconvened.

10:20 a.m.—Argument by Mr. Waddoups; also cites
Houghtailing vs. Dela Nux, 25 Haw.
438. [34]

10:28 a.m.—Answering argument by Mr. Lee.

Mr. Lee asks permission to proceed
further on the matter of an Accounting.

After summing up the evidence, the Court ruled
in favor of the Petitioner and ordered an Account-
ing.

Mr. Waddoups is allowed the privilege of taking
an interlocutory appeal to the Supreme Court on
the findings.

By Order of Court:

/s/ R. A. LYNN,
Clerk.

Court Adjourned at 11:00 a.m.

At Term: Saturday, July 24, 1948, at 9:00 a.m.

MINUTE ORDER

The Court this date set aside its order for an accounting made on July 2, 1948, and will take the case under advisement.

By Order of Court:

/s/ R. A. LYNN,
Clerk. [35]

[Title of Court and Cause.]

DECISION

This is a suit in equity seeking to have an interest in a co-partnership held in trust for petitioner; to have an accounting of the business to establish the amount of petitioner's alleged interest; to have a money judgment against the respondents for the amount shown by an accounting to be due him; and that a receiver be appointed to carry on the business.

The petitioner was a sergeant of police in Honolulu during the entire period covered by these proceedings.

Respondent Fook Hing Tong is a physician and surgeon practicing his profession in Honolulu who was very friendly with petitioner for a period of two years prior to the purchase of the business involved in this suit.

Respondent Chong Hing Tenn, a brother of Fook

Hing Tong, is a former resident of Kohala, Hawaii, where he [36] operated a store and liquor business prior to 1941 and was interested in getting into the liquor business in Honolulu during 1940 and 1941.

Respondent Kui Hing Tenn is the third brother interested in the business.

During the latter part of 1940 and the year 1941 Chong Hing Tenn was interested in getting into the liquor business in Honolulu and endeavored to have his brother Dr. Tong aid him in financing the purchase of various establishments. From the summer of 1941 until the Green Mill was purchased by the Tenn brothers, Dr. Tong visited various liquor establishments with his good friend Ching (petitioner) in an effort to find one for sale. About the first of September it was learned that the male owner of the Green Mill, because of ill health, desired to sell.

A conference was held one evening at the home of the father of the Tenn brothers at which the three respondent brothers, the father and Ching were present when the purchase of the Green Mill was discussed. The expected price was \$30,000.00. Upon learning that Ching was acquainted with Lum, co-owner, with his wife, of the Green Mill, they all went to Lum's home. After some discussion Lum agreed to sell for \$25,000.00 plus the inventory and the Tenn brothers and Ching agreed to buy the Green Mill. A tender of a \$200.00 check to bind the agreement was refused by Lum who advised the parties that his attorney, Hiram Fong, would take

care of all the details of [37] the sale and transfer of the business, which included an assignment of a lease, the transfer of the liquor license, and an inventory of the stock on hand. Lum further agreed to allow the prospective purchasers to operate the Green Mill while the transfer was being made.

At this time it was agreed that Ching's share would be \$3,000.00 and the balance would be paid by the Tenn brothers. Dr. Tong put up \$10,000.00 in cash which he turned over to his brother Kui Hing, as he was then in the Army and stationed on Maui.

Ching had no ready available cash, so had to raise it himself. He endeavored to have Dr. Tong finance him without avail. He asserts that he made arrangements with one K. C. Wong, the owner and operator of the Riverside Grill (a restaurant and bar) to loan him, when needed, the sum of \$2,000.00 without any security, and the balance was to be raised by putting an additional mortgage on his house.

It was agreed between the parties that upon the formation of the partnership that the active members would be Ching, who would be in charge of the personnel and management of the business, and Chong Hing Tong who would take care of the finances and any legal matters. Each was to draw a salary of \$250.00 a month in addition to their share in the business.

Under this arrangement they took over the operation of the Green Mill, with the aid and supervision of Mr. and Mrs. Lum, the former owners, dur-

ing the period while Hiram Fong was completing the transfer of lease and liquor license and inventorying the stock. [38]

The sale of the Green Mill was closed about October 20, 1941, but was retroactive as of October 1, 1941. From about the middle of September until about October 20, 1941, the Green Mill was operated by Ching and Chong Hing. Up to October 1st, it was a trial period under the supervision of the Lums and after that for the new purchasers. During this period some friction arose between Ching and Chong Hing which resulted in a letter being written by Ching to Dr. Tong. In response thereto Dr. Tong wrote to both Ching and Chong Hing on October 6, 1941. The letter to Chong Hing was a direction to allow Ching to manage the Green Mill and look after Dr. Tong's interest or to buy out Dr. Tong's interest. The letter to Ching reaffirmed the oral arrangement between the Tenn Brothers and Ching to be partners in the business, and advised Ching that he was to have three shares "that is if you get the dong by then." It also asked Ching to take care of Dr. Tong's interest in the business.

From the testimony, the letter of October 6, 1941, and the bank statement of Kui Hing Tenn, it is not clear how much money Dr. Tong put up in the first instance to buy the business. But, it does appear from the testimony that at the time of forming the partnership the interests of the respondents were Dr. Fook Hing Tong \$10,000.00, Chong Hing Tenn \$10,000.00 and Kui Hing Tenn \$5,000.00.

By the uncontroverted testimony the petitioner never tendered the amount of this subscription (\$3,000.00) to any of the present respondents. He asserts this failure is: no demand was made on him to put up his \$3,000.00 by [39] Chong Hing Tenn who was to take care of the finances. Petitioner admittedly did not get along too well with Chong Hing Tenn and complained to Dr. Tong and was advised that he would be in the partnership "that is if you get the dong (money) by then." With this warning he made no tender of his share. Then upon learning he was not included in the partnership he borrowed \$75.00 and went to Maui and, according to Dr. Tong, again asked him (the Doctor) to finance him. Petitioner's story of lack of demand coupled with a promise of an unsecured loan from a competitor to pay his share seems rather weak as against a direct demand and warning by Dr. Tong to get the money, and never discussing the matter of putting up his \$3,000.00 when he knew at the time that the necessary transfers were being made by Attorney Fong. After making his trip to Maui in October, 1941, he did not tender his \$3,000.00 on the excuse that he did not want to be involved in a lawsuit. Then it is significant that during the several months the bars were closed in Honolulu following Dec. 7, 1941 (Pearl Harbor attack), he did nothing. It was not until late in 1943, when every bar in town had **a doorman or bouncer to keep the prospective customers from overcrowding the bars**, and all bars were and had been for over a year doing a land

office business, that petitioner sought to get his original agreed share in the business.

On October 1, 1941, petitioner unquestionably had a right upon putting up \$3,000.00 to get a share in the business. Means were then available to him to learn and be aware of what was going on relative to the proposed [40] partnership. He could have checked on the transfer of the liquor license, the assignment of the lease through either Fong or Lum and the Gross Income License at the Tax Office and acted accordingly. But he did nothing. Equity helps the vigilant, not those who sleep on their rights.

The agreement upon which this action is based, was one to form a partnership. It was never formed principally because the petitioner could not, would not or did not put up his share of the investment in the proposed venture, and the Court can see no equity in his present request to share in the profits of the industry and financed enterprise of the respondents.

A decree in favor of the respondents and against the petitioner, together with costs, will be signed on presentation.

Dated: Honolulu, T. H., this 25th day of August, 1948.

/s/ WILSON C. MOORE,

Judge of the Above-Entitled
Court.

Filed August 25, 1948. [41]

In the Circuit Court of the First Judicial Circuit
Territory of Hawaii

In Equity

At Chambers

HUNG CHIN CHING,

Petitioner,

vs.

FOOK HING TONG, CHONG HING TENN and
KUI HING TENN,

Respondents.

DECREE

The above-entitled cause having come on duly to be heard, and Petitioner being present at all hearings and represented by Herbert K. H. Lee, Esquire, and David R. Castleman, Jr., Esquire, attorneys; and Respondents having been present at all hearings and represented by Thomas M. Waddoups, of the law firm of Robertson, Castle & Anthony; and evidence having been adduced and both sides having rested; the Court, on August 25, 1948, filed its decision herein, which said decision sets forth in full the reasons for the Court's findings herein;

Now Therefore, It Is Hereby Ordered, Adjudged and Decreed that Petitioner have nothing by his action; that the Bill to Declare Trust and Lien, for an Accounting, for Receiver, and for Money Judgment, be and the same is hereby [42] dismissed:

and Respondents may go hence with costs accrued herein.

Dated: Honolulu, T. H., September 2, 1948.

/s/ WILLSON C. MOORE,
Judge of the Above-Entitled
Court.

Approved as to form:

/s/ HERBERT K. H. LEE,
Attorney for Petitioner.

Filed September 2, 1948. [43]

[Title of Court and Cause.]

APPEAL AND NOTICE OF APPEAL

Comes now Hung Chin Ching, Petitioner, and does hereby appeal and does hereby give notice of appeal to the Supreme Court of the Territory of Hawaii, from the Decree made and entered in the above-entitled Court and cause by the Honorable Willson C. Moore, Judge of said Court, on September 2, 1948.

Dated at Honolulu, T. H., this 9 day of September, A. D., 1948.

HUNG CHIN CHING,
Petitioner,

By HERBERT K. H. LEE and
DAVID R. CASTLEMAN, JR.

By /s/ HERBERT K. H. LEE.

Filed September 9, 1948. [44]

In the Supreme Court of the Territory of Hawaii

No. 2729

HUNG CHIN CHING,

Appellant,

vs.

FOOK HING TONG, CHONG HING TENN and
KUI HING TENN,

Appellees.

APPEAL FROM DECREE OF THE FIRST
JUDICIAL CIRCUIT AT CHAMBERS, IN
EQUITY

AMENDMENT TO BRIEF

The Brief heretofore filed herein by Appellant is amended by incorporating therein, immediately following the conclusion of that part thereof entitled "Introduction," the following:

Errors Relied On

(1) The Court below erred in holding that the "agreement upon which this action is based was one to form a partnership" since all the evidence showed that it was an agreement of joint venture between the parties stipulating their respective interests in a business which was actually acquired.

(2) The lower Court erred in finding that the agreement was never consummated as planned because of Petitioner's failure to put up his share of the money, instead of holding (as the Trial

Judge did in his first opinion) that “at the time this partnership was actually consummated, it really amounted to a squeeze out of Ching.”

(3) The lower Court erred in finding that Petitioner’s share of the money was due October 1, 1941, in that there is not a scintilla of evidence in the record that October 1st or any other specific date was fixed by the parties as the deadline for payment of their shares.

(4) The lower Court erred in finding that Petitioner was [45] guilty of any lack of vigilance in failing to find out on October 1, 1941, that he had been left out of the formal partnership, since all the evidence shows that no means were readily available to him to discover that fact until at least a week after October 1st, and since, as a matter of law, he was not obliged to be suspicious of his associates.

(5) The lower Court erred in suggesting that Petitioner was guilty of laches in pursuing his legal remedy, and in failing to find (as the Trial Judge did in his first opinion) that, under all the circumstances, the doctrine of laches did not apply in this case.

(6) The lower Court erred in ruling that there is no equity in Petitioner’s request to share in the “industry and financed enterprise of Respondents,” since there is not a scintilla of evidence showing that Respondents expended any industry (except in the case of Chong Hing Tenn who was paid an

adequate salary therefor) or had any further financial dealings with the Green Mill except to collect profits.

(7) The lower Court erred in failing to decree an accounting (as it did in its first decision) and in failing to adjudge that Petitioner owns and has owned since October, 1941, a 3/25ths interest in the Green Mill.

Respectfully submitted,

/s/ HERBERT K. H. LEE,

/s/ DAVID R. CASTLEMAN, JR.,
Attorneys for Appellant.

Filed March 9, 1950. [46]

[Title of Court and Cause.]

OPINION OF SUPREME COURT

Appeal and Error—Equity—Findings of Fact—
Weight on Review.

Upon appeal from a final decree in equity, while the findings of fact by a trial judge are not conclusive upon review, yet, where such findings depend upon the credibility of witnesses and the weight of conflicting testimony, such findings are entitled to great weight.

Joint Purchasers—Oral Agreement—Non-Performance—Default.

Where, by oral agreement between prospective joint purchasers of a business enterprise the contributive share of each is fixed and determined, and one of the parties fails to perform, the remaining parties may, in the absence of a showing of fraud or bad faith, consummate the purchase excluding the defaulting party. [47]

Equity—Evidence Requisite to Establish Fraud or Bad Faith.

Equitable relief premised upon fraud or bad faith will be denied in the absence of an affirmative showing thereof practiced upon the party seeking redress. [48]

Opinion of the Court

By Towse, J.:

This is an appeal from a decree dismissing a bill to declare a trust and lien, for an accounting, for receivership and for a money judgment. The original bill is supplemented by three amended bills, which, together with the original bill, were the subjects of demurrer, each respective demurrer being overruled.

The material allegations of the bill as amended, upon which the petitioner seeks relief and which are necessary to the disposition of this appeal, aver that on or about September 13, 1941, the petitioner and respondents Fook Hing Tong and Chong Hing

Tenn conferred informally with reference to an association and combination of their resources for the purpose of thereafter engaging in the restaurant and liquor dispensing business in Honolulu; that on the same day, the petitioner and respondent Fook Hing Tong approached one Tam H. Lum, proprietor of the Green Mill, a restaurant and liquor dispensing establishment upon the subject of purchasing the said business. Lum expressed a willingness to dispose of the business for the sum of \$30,000, conditioned upon his wife's approval; that during the evening of the same day, the petitioner and the respondents agreed to purchase the business for a maximum purchase price of \$30,000 and to conduct the same as a joint adventure, each further agreeing and mutually promising to contribute toward the purchase price their respective contributive shares in the following proportions: Petitioner, \$3,000, or one-tenth of the purchase price; the respondents, the remainder of the purchase price in amounts and share interests to be agreed [49] upon among themselves. The allocation of shares upon consummation of the purchase was understood and agreed by and between all party purchasers, to be that the petitioner was to contribute and receive a one-tenth interest, or share in the business, and the respondents the remaining nine-tenths interest or nine shares. It was simultaneously agreed between all party purchasers that the respondent Chong Hing Tenn was to assume and exercise exclusive control of the finances of the business; that petitioner was to assume and exercise exclusive con-

trol of the sale and personnel of the business, and that each was to receive a salary of \$250 per month therefor in addition to his respective interest in the enterprise. The remaining respondents were excluded from personal participation in the management or conduct of the business. On the following day Lum and his wife orally agreed with the purchasers to sell the business including the trade name and good will thereof, and to assign the lease of the business premises to them. A purchase price of \$25,000 was agreed upon. In addition to the foregoing oral agreement, the sellers voluntarily agreed and consented to a trial operation of the business by the purchasers until October 1, 1941, upon which date the purchase price was to be payable if the purchasers were satisfied with the experiment. The ad interim proceeds of the business during the trial period were to become realizations of the purchasers in the event the sale was consummated. Pursuant to the agreement between the parties to assume active operating control of the business on behalf of all of the purchasers under the trial operation arrangement with the sellers between the period [50] September 16, 1941, the date of commencement of the trial operation period, and October 1, 1941, the termination thereof, the business prospered and the purchasers elected to exercise their right of purchase. On or about October 1, 1941, without the knowledge of or notice to the petitioner and pursuant to and in execution of the oral contract to purchase, the respondents procured transfers of the business and the lease

of the business premises into their names with their own funds to the exclusion of the petitioner, who was at all times ready, willing and able to contribute his agreed share of the purchase price, and who expected and was waiting for notification as to when his contribution should be made since the respondents were to attend to the formal consummation of the purchase. Since all dealings between the party purchasers prior thereto had been informal and characterized by mutual confidence, the petitioner as a result was neither suspicious, nor did he exercise vigilance in respect of the formal consummation. On or about October 6, 1941, petitioner complained to respondent Fook Hing Tong that Chong Hing Tenn who, together with the petitioner, had been actively operating the business, was interfering with his exclusive operational duties as agreed upon. The respondent Fook Hing Tong thereupon reassured the petitioner of his interest in the business to the extent of \$3,000 and remonstrated with the respondent Chong Hing Tenn regarding petitioner's exclusive managerial duties and of his interest in the joint adventure. On or about October 11, 1941, the petitioner was informed that articles of copartnership between the respondents were about to be prepared to the exclusion of the petitioner. The petitioner conferred with the respondent [51] Fook Hing Tong who again assured petitioner that the oral agreement as agreed upon between the party purchasers would be respected. On or about October 20, 1941, the respondents procured a transfer of the retail liquor license

of the said business to themselves without notification to the petitioner and omitting him as a licensee. On or about October 30, 1941, the respondents executed articles of copartnership excluding the petitioner. The respondents have operated the said business from that date to the filing of the bill herein to the exclusion of the petitioner, thereby appropriating to their own use the business, trade name, good will, and assigned lease, and failing to account to him for his interest therein or profits due him, though the events and acts of the parties heretofore set forth constituted the parties, as alleged in the bill, "joint adventurers or partners."

The bill as amended prays for an accounting between petitioner and the respondents; that the amount of respondents' obligation to the petitioner be determined, and that petitioner have judgment against the respondents jointly and severally for the amount thereof; that respondents, by way of answer under oath, disclose their respective contributions to the purchase price of the business and the leasehold and their respective interests in the said business, together with the proportionate division of profits derived therefrom as among themselves; that respondents, by way of answer under oath, disclose the gross and net incomes from the business from September 16, 1941, to the date of filing of the bill, together with the application of the net income during that period as among themselves; that a lien be declared securing respondents' obligations to the petitioner upon the leasehold and upon the net profits of the business during the aforementioned

period; that the respondents be adjudged as trustees for and on behalf of petitioner to the extent of his interest as determined, together with the lease upon the business premises, the good will, trade name, and net profits accruing from the business since September 16, 1941, to the date of filing of the bill for the use and benefit of petitioner, and that a receiver be appointed for the business and the property constituting the same.

On June 16, 1948, four years subsequent to the filing of the original bill, by way of answer to the bill as amended, the respondents denied generally the material allegations thereof. They further specifically denied and alleged that they at no time consummated any agreement for a copartnership between the petitioner and themselves; that no tender of any kind or amount was ever made by the petitioner for the purchase of any share of the business, and that the respondents had at all times acted in good faith in respect of the petitioner.

From the evidence adduced below the following facts, pertinent to this appeal, were found by the trial judge:

The petitioner was a sergeant of police in the Honolulu Police Department during the entire period covered in the proceedings; that the respondents are brothers and the petitioner was very friendly with the respondent Fook Hing Tong for a period of two years prior to the consummation of the purchase of the business; that during the latter part of 1940 and the year 1941, one of the respondent-brothers, Chong Hing Tenn, was interested in

engaging in the [53] liquor business and solicited the assistance of his brother Fook Hing Tong to aid him in financing the purchase thereof; that commencing with the summer of 1941 until the consummation of the purchase of the Green Mill by the respondents, the respondent Fook Hing Tong together with the petitioner, visited various liquor establishments in an endeavor to locate one for sale. On or about September 16, 1941, they learned that the Green Mill was for sale. A conference was had at the home of the respondents' father attended by the respondents, their father and the petitioner. The purchase of the Green Mill was discussed. It was orally agreed by and between the respondents and the petitioner that the petitioner's contributive share would be \$3,000. The remainder of the purchase price was to be contributed by the respondent-brothers. Upon being advised that the petitioner was acquainted with the owner of the Green Mill, they proceeded to his home. After a discussion, a sales price of \$25,000, in addition to the inventory, was agreed upon, the respondents and the petitioner orally agreeing to purchase the business for that amount. The seller advised the parties that his attorney would attend to all details of the sale and the transfer of the business, including an assignment of the lease of the business premises, the transfer of the liquor license and an inventory of the stock on hand. The seller further agreed to permit the prospective purchasers to operate the business during the transfer period.

The petitioner had no currently available funds. He endeavored to have Fook Hing Tong finance him without success. By way of available assets, petitioner testified [54] that he had effected arrangements for a loan, when needed, in the sum of \$2,000 without security, further asserting that the balance of \$1,000 was available and could be raised by an additional mortgage charge upon his home. The court found that the respective interests, which the respondents did in fact contribute, were Fook Hing Tong and Chong Hing Tenn, the sum of \$10,000 each, and Kui Hing Tenn, the sum of \$5,000.

The trial judge further found that it had been agreed by and between the petitioner and respondents that the petitioner was to be in charge of the management and personnel of the business, and the respondent Chong Hing Tenn in charge of the finances and legal matters; each to draw a salary of \$250 per month in addition to his respective share in the business. Under this management arrangement, the party purchasers took over the operation of the Green Mill with the aid and under the supervision of the sellers during the period in which the completion of the transfer of the lease and the liquor license were being effected and an inventory of the stock was being completed. The consummation of the sale of the business was found to be on or about October 20, 1941, retroactive to October 1, 1941; and that from on or about September 15, 1941, to October 20, 1941, the business

was operated under the dual management of the petitioner and respondent Chong Hing Tenn. Differences arose between the petitioner and the respondent Chong Hing Tenn during the trial management period. The petitioner made letter protest to the respondent Fook Hing Tong citing the interference of his brother, Chong Hing Tenn, in certain [55] operational phases of the business. The respondent Fook Hing Tong then being on the island of Maui, replied to both the petitioner and respondent Chong Hing Tenn on October 6, 1941, and expressly reaffirmed the oral agreement among the party purchasers and reassured the petitioner that he was to share in the business to the extent of a three-share interest upon the express condition that he make contribution of the amount representing his three-share interest as agreed upon.

Evidence of the petitioner's failure to tender this amount is uncontradicted. He asserted the two-fold reason for his failure to do so; first, that no demand was made upon him; second, the letter assurance and reaffirmance of the respondent Fook Hing Tong that he would be permitted to participate in the purchase upon the condition that he tender his contributive share.

During the period in which the transfers were being consummated by the attorney for the sellers, the petitioner asserts that his exclusion in the proposed partnership came to his attention for the first time. He thereupon borrowed the sum of \$75 and proceeded to Maui to confer with the respondent Fook Hing Tong where he again endeavored to

have him finance the contribution of his three-share interest. Fook Hing Tong refused. On April 5, 1944, approximately two and one-half years after the formation of the copartnership between the respondents, the original bill herein was filed.

Upon examination of the transcript of evidence, this court finds the testimony adduced in the court below upon all material issues patently saturated with evasive, contradictory and conflicting statements. The trial judge [56] converted this testimony into the findings of fact hereinabove set forth. Upon the entire record now before us, this court in the circumstances, resorts to and adopts the established rule that issues of fact, the determination of which by the trial court is dependent solely or in a great degree upon the weighing of conflicting testimony and the credibility of witnesses, are entitled to great weight upon review. (*De Souza v. Soares*, 22 Haw. 17; *McCandless v. Castle*, 25 Haw. 22; *Nawahie v. Goo Wan Hoy*, 26 Haw. 137; *Jellings v. Garcia*, 29 Haw. 698.) This adoption, however, has and does not preclude a review of the entire case with independent findings of fact and rulings by the appellate court, should the record on review so warrant. (*Pinheiro v. Pinheiro*, 32 Haw. 659.)

The sole question presented, therefore, is whether the evidence is such as to warrant the findings upon which the decree is premised, it being incumbent upon the petitioner-appellant seeking reversal thereof to disclose error or sufficient grounds warranting reversal of the decree rendered.

The petitioner asserts that bad faith and fraud were practiced upon him by the respondents resulting in his exclusion from the copartnership as formed on October 20, 1941. From a review of the record and the facts established below, we find that the petitioner has failed to prove either bad faith, a violation of or exclusion from the oral agreement that he become a party purchaser, a violation of confidence reposed by him in the respondents, or fraud perpetrated upon him by any or all of the respondents.

The crux of the petitioner's position, which we deem to have been affirmatively established by the testimony [57] as found by the trial judge, is one of nonperformance. The record bears no recession or cancellation of the original agreement which entitled the petitioner to participate in the purchase conditioned upon the payment of his contributive share of \$3000, by any or all of the respondents, or by the petitioner himself. Under the oral agreement with the seller fixing the time of payment of the purchase price as October 1, 1941, a limitation of time for performance by the petitioner, during which he was to tender his contributive share, was fixed and agreed upon. Of this limitation and due date the petitioner, as a party to the very agreement, possessed positive and unequivocal knowledge and notice. In addition to the fact that the experimental period of operation by the party purchasers was to terminate on October 1, 1941, during which period the petitioner had ample opportunity to tender his contributive share, the evi-

dence further discloses that the sale, by way of execution of all requisite documents and transfers, was not consummated until October 20, 1941, retroactive to October 1, 1941. The Petitioner was, by operation of time and with the acquiescence of the respondents, gratuitously accorded an extra period of dispensation in which to tender his contributive share. During this twenty-day period of additional concession, the petitioner failed to perform, and has not, in our opinion and as found by the trial judge, established any valid reason for his default. The letter of October 6, 1941, from Fook Hing Tong to the petitioner, fourteen days prior to the actual consummation of the sale, contains an affirmance that the original agreement between all party purchasers, including the petitioner, was still in effect, though the [58] trial period and the due date of the purchase price on October 1, 1941, expired six days prior thereto. The period within which the petitioner could have tendered his contributive share was thereby extended to October 20, 1941. Of this extension of time in which to perform, the petitioner was also given notice. The trial judge found that as of October 1, 1941, the petitioner unquestionably possessed a right upon making contribution of the sum of \$3000 to share in the business to that extent. In this we concur. Upon review of the record we are of the opinion that in addition thereto, the petitioner possessed an extended right and period of performance to and including October 20, 1941, the date of the consummation of the sale.

The purchase price was payable by the party purchasers on October 1, 1941. The petitioner, as a party to that oral agreement, was aware of and so bound, as were all the party purchasers, by this due date of payment. The record reveals no denial by the petitioner of notice or understanding of this fact. On the contrary, he affirmatively alleges such to be the fact in his bill.

The record leaves no doubt that the petitioner originally intended, together with the respondents, to become a party purchaser and enter into the liquor and restaurant business as agreed upon. It affirmatively discloses that he did not, however, pursue this intention by performance. The record further discloses that petitioner's right of contribution was expressly conditioned upon tender of his contributive share as agreed upon. This he failed to do.

The respondents, upon petitioner's default, contributed the sum of \$25,000, which was paid to the sellers as [59] the purchase price of the business as agreed upon. They thereupon formed and registered a copartnership between themselves excluding the petitioner, to the end that they, as the remaining party purchasers, would be qualified to render continuity to the operation of the business in conformance with the attending legal requisites. The petitioner failed to tender his contributive share to the enterprise and has given no valid excuse for failing to do so, and was thereby precluded from participating therein as a result of this failure. He has further failed, in this court's opinion upon review of the

record, to establish his asserted right to be presently included as a member of the copartnership formed on October 20, 1941, retroactive to October 1, 1941.

The respondents, on the contrary, violated no confidence the petitioner reposed in them, violated no oral agreement entered into between the original party purchasers, displayed no bad faith, nor practiced or perpetrated fraud upon the petitioner in respect of his exclusion from membership in the registered copartnership. They elected to adhere to their original agreement as party purchasers and pursuant thereto contributed their respective shares as agreed upon. They further acquiesced in and accorded the petitioner the extended period of grace above referred to during which time he also failed to perform. He admittedly defaulted.

Upon the entire record on review, whether or not the original oral agreement between the parties to the proceeding constituted a copartnership or joint adventure binding them with the legal incidents flowing therefrom, is not pertinent to the disposition of the issues of facts presented which are determinative of the sole question presented on appeal. [60]

Measuring the findings of fact of the trial judge by affixing the weight attributable to them under the ruling adopted, *supra*, this court finds that the evidence below warranted the findings made.

No reason having been established on review for

disturbing those findings, the decree dismissing the bill is affirmed.

/s/ S. B. KEMP,

/s/ EDWARD A. TOWSE,

/s/ JOHN ALBERT

MATTHEWMAN.

D. R. CASTLEMAN, JR., and

H. K. H. LEE (also on the briefs) for Appellant.

T. M. WADDOUPS (ROBERTSON, CASTLE & ANTHONY with him on the brief (for Appellees.

Filed August 18, 1950. [61]

[Title of Court and Cause.]

NOTICE OF DECISION ON APPEAL

To Hon. Willson C. Moore, Judge of the Circuit Court of the First Judicial Circuit, Territory of Hawaii:

Please Take Notice that in the above-entitled cause the Supreme Court has entered the following decision on appeal:

“Pursuant to the opinion rendered and filed in the above-entitled cause on August 18, 1950, the decree dismissing the bill is affirmed.”

Dated: Honolulu, T. H., Sept. 12, 1950.

By the Court:

[Seal] /s/ LEOTI V. KRONE,
Clerk.

The form of the foregoing notice is hereby approved and It Is Ordered that the same issue forthwith.

Dated: Honolulu, T. H., September 12, 1950.

/s/ EDWARD A. TOWSE,
Associate Justice Supreme Court, Territory of Hawaii.

Filed Sept. 12, 1950. [62]

[Title of Court and Cause.]

WITHDRAWAL OF COUNSEL

Come now Herbert K. H. Lee and David R. Castleman, Jr. and hereby withdraw as counsel for Hung Chin Ching, Appellant in the above-entitled cause and Court.

Dated at Honolulu, T. H., this 20th day of September, A. D., 1950.

HERBERT K. H. LEE, and
DAVID R. CASTLEMAN, JR.,

By /s/ HERBERT K. H. LEE.

Approved:

/s/ HUNG CHIN CHING,
Appellant.

Filed September 20, 1950. [63]

[Title of Court and Cause.]

APPEARANCE OF COUNSEL

Comes now Shiro Kashiwa and hereby enters his appearance as attorney for Hung Chin Ching, Appellant in the above-entitled cause and Court.

Dated at Honolulu, T. H., this 19th day of September, A. D., 1950.

/s/ SHIRO KASHIWA.

I hereby authorize the foregoing Appearance.

/s/ HUNG CHIN CHING,
Appellant.

Filed September 20, 1950. [64]

[Title of Court and Cause.]

PETITION FOR REHEARING

To the Honorable Justices of the Supreme Court of
the Territory of Hawaii:

Comes now Hung Chin Ching, Appellant above
named, and respectfully shows:

I.

That Petitioner is the Appellant in the above-entitled cause and Court.

II.

That the above-entitled cause was remanded to

this Court by an order entered in the above-entitled cause and Court and that this cause is presently before this Court.

III.

That the former attorneys, Herbert K. H. Lee and David R. Castleman, Jr., who represented the Appellant withdrew as of September 20, 1950, and thereafter Appellant has been represented by Shiro Kashiwa.

IV.

That the Supreme Court erred in completely disregarding the following pertinent fact findings of the lower Court: [65]

“After some discussion Lum agreed to sell for \$25,000.00 plus the inventory and the Tenn brothers and Ching agreed to buy the Green Mill * * *” (Page 2 of trial Court’s written decision). (Emphasis ours.)

“At this time it was agreed that Ching’s share would be \$3,000.00 and the balance would be paid by the Tenn brothers * * *” (Page 3 of trial Court’s written decision.) (Emphasis ours.)

It is submitted that upon the foregoing findings this Court must necessarily find that each of the buyers, including the Appellant, was jointly and severally liable to the seller Lum for \$25,000.00 plus about \$10,000.00 for the inventory. In other words the Appellant incurred a liability of \$35,000.00. The seller Lum could have sued the Appellant and have obtained judgment for \$35,000.00 against the Appel-

lant if the deal did not go through. Furthermore, the Tenn brothers could have sued the Appellant for \$3,000.00 as his contributive share. These conclusions are not to be denied because the legal result of the trial Court's findings necessarily leads to these further legal conclusions. Furthermore, as soon as the contract was entered into the Appellant together with the Tenn brothers had, as against Lum, the right to enforce the contract in a court of equity by way of specific performance. *Chamber of Commerce v. Barton* (1937), 195 Ark. 274, 112 S. W. (2) 619; *Brady v. Yost*, 6 Idaho 273, 55 P. 542; *Rothholz v. Schwartz*, 46 N. J. Eq. 477, 19 A. 312, 19 Am. St. Rep. 409; *Tong On v. Tai Kee*, 11 Haw. 560. See *Sakata v. Yoshikawa*, 22 Haw. 288, where a lease is involved as in present case. In other words, the Appellant together with the Tenn brothers acquired a right enforceable in equity—often called “equitable title.” There is no evidence whatever that the Appellant ever released Lum, the seller, from Lum's agreement to sell to the Appellant also. Neither was there a default [66] in the payment of the purchase price as far as Lum was concerned. Such being the case, the Tenn brothers took the title to the business as trustees for themselves and the Appellant. In 49 Am. Jur. 171 it is stated in paragraph 148 as follows:

“Conflicting Purchasers. It is well settled that one who takes a deed of land with knowledge of an outstanding contract or title takes it subject to such contract or title, and the

person who purchases property with notice of a prior agreement by the vendor to convey to another person is regarded as the trustee of the latter. Therefore, one purchasing property with notice that the grantor has contracted to convey it to another may be compelled to perform the contract in the same manner and to the same extent as his grantor would have been liable to do had he not transferred the legal title.” (Emphasis ours.)

Since the Tenn brothers held the business in trust for the Appellant as far as his pro rata share is concerned the Appellant was and is entitled to an accounting.

V.

That the Supreme Court erred in affirming the lower Court’s decision in that upon the trial Court’s finding:

“After some discussion Lum agreed to sell for \$25,000.00 plus the inventory and the Tenn brothers and Ching agreed to buy the Green Mill * * *” (Page 2 of trial Court’s written decision.)

“At this time it was agreed that Ching’s share would be \$3,000.00 and the balance would be paid by the Tenn brothers * * *” (Page 3 of trial Court’s written decision.) (Emphasis ours.)

The Tenn brothers and the Appellant jointly held an equitable title to the premises and the evidence is undisputed that they jointly as of October 1,

1941, operated the business and that the Appellant rendered services, the lower Court should have found a joint adventure. All of the elements of a joint venture were present. First of all they combined and agreed to purchase and thereby created a joint proprietorship by [67] way of equitable title; the management and control was mutual; the agreement was to share the profits. There could not have been a more clear case of joint adventure.

VI.

The trial Court and this Court erred in completely disregarding the Appellant's contribution of services in that:

“Effect of performance. The performance of services by a joint adventurer in accordance with his agreement with associate or associates gives him, not only a vested interest in the profits derived from the successful prosecution of the enterprise * * * but also in the real and personal property embarked therein, as effectually as though he had contributed a part of the capital with which it was purchased * * *”
48 C. J. S. 836.

Section 9578 of the Revised Laws of Hawaii, 1945, provides:

“The several courts, in their decisions, shall have due regard to vested rights.”

Once a joint adventure is in operation and a party renders services his rights in the joint venture cannot be forfeited summarily.

In 33 C. J. 854 it is stated:

“After the agreement has been partially executed by the member’s payment of a part of the capital or the performance of services, his associates cannot forfeit his interest in the enterprise and exclude him from further participation therein merely because of his failure to pay the full amount promised by him, especially when no demand has been made upon him for contribution and he has not refused to pay his share; but his interest is held subject to the claim of his associates for any losses which his default may have caused them.”
(Emphasis ours.)

VII.

The trial Court in its oral decision found as follows:

“Well, this Court believes that at the time that this partnership was actually consummated it really amounted to a squeeze-out of Ching, and at that time there is no question in this Court’s mind that had Ching proceeded to claim or demand his share that he would unquestionably be entitled to obtain it.” (Tr. 264.)
(Emphasis ours.) [68]

The foregoing was a fact finding of fraud on the part of the Tenn brothers.

The later written decision did not in any manner negative said finding. None of the findings in the written decision are contrary to this finding. It is submitted that since equity courts in the Territory

of Hawaii are not required to write their decisions by any statute, its decisions may be either oral or written or may be partly written and partly oral.

In 3 Am. Jur. 457 it is stated:

“Findings of fact made by the trial Court in the ruling upon motions or in making rulings in the course of a trial are regarded on appeal in much the same manner as findings of fact upon which the final judgment is rendered.”

See also *McKenny v. Wood* (Me.), (1911), 80 Atl. 836, in which the Court held that where the laws of the state do not require a written decision the fact that the decision was signed or unsigned is immaterial.

It is respectfully submitted that since the finding of fact, being “squeezed out,” in the oral decision was not overruled by any subsequent finding of fact by the judge, the former finding must stand. It is submitted that if the Appellant was squeezed out a court of equity should have granted him relief.

Wherefore, Petitioner prays that a rehearing be granted to the Petitioner.

Dated at Honolulu, T. H., this 26th day of September, A. D. 1950.

HUNG CHIN CHING,
Appellant.

By /s/ SHIRO KASHIWA,
His Attorney.

Filed September 27, 1950. [69]

[Title of Court and Cause.]

DECISION ON PETITION FOR REHEARING

Decided November 16, 1950

The petition for rehearing upon the opinion reported in 38 Hawaii 616 asserts four grounds.

Ground one asserts that this court disregarded two findings of fact by the trial court, first: that the seller agreed to sell and the respondents and petitioner agreed to purchase the business; second, that all parties to the proceeding agreed inter se that petitioner's contributive share of the purchase price was to be \$3,000, the balance to be contributed by the respondents. These findings were adopted and considered, as evidenced by their recitation in the opinion, they being expressly enumerated therein.

The petitioner-appellant urges that as a result of the conclusion of this court in disregard of the foregoing he, jointly and severally with the respondents, would have incurred a potential liability for the entire purchase price of \$35,000, and the vendor could therefore have sought and [70] obtained judgment against him in that amount in the event the purchase was not consummated; or, in the alternative, the respondents could have proceeded likewise to enforce payment of the petitioner's contributive share of \$3,000; and that resultingly, all of the joint purchasers, including the petitioner-appellant, acquired a right to enforce the purchase agreement against the vendor by specific performance by and through their equitable title; and the

petitioner, not having released the vendor from his agreement to sell to him, the respondents thereby did in fact acquire the business as trustees for themselves and the petitioner.

Assuming, without deciding, that the principles of law urged are applicable to those factual situations had they been before the court for determination, nevertheless neither the theory nor the principles urged were presented, for the reason that the petitioner admittedly defaulted in his failure to contribute his agreed share of the purchase price. The authorities cited are readily distinguishable from the facts presented. They involve suits for specific performance of contracts to enforce the conveyance of property, equity jurisdiction being premised upon the inability of a court of law to accord the aggrieved parties in those circumstances a full, adequate and complete remedy—as between vendor and vendee. The instant litigation is between joint vendees alone. The cases also present factual situations where, as between vendors and vendees, either partial or complete performance by either or both of the parties exists, with the resulting acquisition and assertion of an [71] equitable right of specific performance predicated thereon. The factual situations and the principles urged are inapplicable to the instant appeal.

The second ground urges error in the failure of this court to conclude that a joint adventure existed between the parties to the proceeding. Reiterating the conclusion heretofore announced that a finding

of whether the purchase agreement between the parties constituted them copartners or joint adventurers, binding them with the legal incidents flowing therefrom, was not necessary to the disposition of the issues presented, this ground is without merit.

Ground three is premised upon the assumption of a finding that a joint adventure did in fact exist between the parties. For the reasons stated, *supra*, this ground is rejected.

Ground four urges the adoption by this court of the trial judge's oral findings rendered prior to the entry of the written decision and decree. The written decision is at variance with the oral findings.

The authorities cited in support of the petitioner's contention is that findings of fact made by a trial court in the course of a trial are regarded on appeal in much the same manner as findings of fact upon which the final judgment is rendered. This is a broad statement of the rule applicable in the absence of a governing statute. The contention is urged, however, without consideration of the controlling statutes of this jurisdiction. This is an appeal from a decree of a circuit judge, at chambers, in equity. [71-A] (R. L. H. 1945, §9604 as am.) The jurisdiction of this court to hear and determine the cause is premised upon that section.

"Appeals shall be allowed from all decisions, judgments, orders or decrees of circuit judges in chambers, to the Supreme Court * * *" R. L. H. 1945, §9503 as am.

"It has been repeatedly held by this court that

appeals under this statute must be taken from the decree and not from the decision. *Barthrop v. Kona Coffee Co.*, 10 Haw. 398, 402; *Kahai v. Kuhia*, 11 Haw. 3, 5; *Makainai v. Lalakea*, 24 Haw. 518, 521; *Un Wo Sang v. Alo*, 7 Haw. 673, 674, 675." *Ogata v. Ogata*, 30 Haw. 620, 621, 622.

The present appeal is from the decree entered on September 2, 1948, dismissing the bill. This decree, being as it is final in form, and determinative of the rights of the parties to the controversy, was the final and appealable decree upon which the appeal was allowed and the jurisdiction of this court invoked. Ground four is without merit.

Chief Justice Samuel B. Kemp and Circuit Judge John A. Matthewman, who concurred in the opinion, are disqualified from participation in the instant petition for rehearing by virtue of their retirement.

The petition for rehearing is denied without argument.

S. Kashiwa for the petition.

[Seal] /s/ EDWARD A. PAWSE,
Associate Justice.

Attest:

/s/ GUS K. SPROAT,
Clerk.

A true copy.

Filed Sept. 27, 1950. [72]

[Title of Court and Cause.]

NOTICE OF INTENTION TO APPEAL AND
MOTION FOR ORDER WITHHOLDING
MANDATE TO THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT, TERRI-
TORY OF HAWAII

Comes now Hung Chin Ching, Petitioner-Appellant in the above-entitled Court and Cause, and hereby gives notice that he intends to appeal the above-entitled cause to the United States Court of Appeals for the Ninth Circuit within the time permitted by law, and moves that an appropriate order be entered by this Court under Rule 10 of the Rules of the Supreme Court of Hawaii withholding the issuance of a mandate from this Court to the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

This motion is based on the affidavit hereto attached.

Dated at Honolulu, T. H., this 22nd day of November, A. D. 1950.

HUNG CHIN CHING,
Appellant,

By /s/ SHIRO KASHIWA,
His Attorney. [73]

AFFIDAVIT

Territory of Hawaii,
City and County of Honolulu—ss.

Shiro Kashiwa, being first duly sworn, on oath deposes and says: That he is the attorney of record for Hung Chin Ching, Petitioner-Appellant; that said Hung Chin Ching intends to appeal the above-entitled cause to the United States Court of Appeals for the Ninth Circuit; that affiant is now in the process of preparing an appeal to the United States Court of Appeals for the Ninth Circuit.

/s/ SHIRO KASHIWA.

Subscribed and sworn to before me this 22nd day of November, A. D. 1950.

[Seal] /s/ FLORENCE Y. OKUBO,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires August 9, 1951.

A true copy.

[Endorsed]: Filed November 22, 1950. [74]

[Title of Court and Cause.]

ORDER

It Is Hereby Ordered that any mandate in the above-entitled cause from this Court to the Circuit Court of the First Judicial Circuit be stayed until further order of this Court.

Dated at Honolulu, T. H., this 22nd day of November, A. D. 1950.

[Seal] /s/ LOUIS LE BARON,
Justice of the Above-Entitled
Court.

A true copy.

[Endorsed]: Filed November 22, 1950. [75]

[Title of Court and Cause.]

MOTION FOR LEAVE TO FILE AFFI-
DAVIT REGARDING JURISDICTIONAL
AMOUNT ON APPEAL

Comes now petitioner-appellant in the above-entitled Court and cause and hereby moves that the petitioner-appellant be given leave to file in the above-entitled cause and Court the attached affidavit showing that the amount in litigation in said cause exceeds the sum of \$5,000.00, the jurisdictional amount necessary for any cause to be appealed from the above-entitled Court to the United States Court of Appeals for the Ninth Circuit.

This motion is based on the records of this cause and upon the affidavit attached hereto.

Dated at Honolulu, T. H., this 1st day of December, A. D. 1950.

HUNG CHIN CHING,
Appellant,

By /s/ SHIRO KASHIWA,
His Attorney. [76]

AFFIDAVIT IN SUPPORT OF MOTION

Territory of Hawaii,
City and County of Honolulu—ss.

Shiro Kashiwa, being first duly sworn, on oath deposes and says:

That he is the attorney for the petitioner-appellant; that he is now preparing an appeal of the above-entitled cause to the United States Court of Appeals for the Ninth Circuit; that upon an examination of the record it does not appear that more than \$5,000.00 is involved in the litigation; that upon affiant's examination affiant has found that the amount in litigation far exceeds the said jurisdictional amount of \$5,000.00; and that he makes this affidavit in support of the foregoing motion and upon his own knowledge.

/s/ SHIRO KASHIWA. •

Subscribed and sworn to before me this 1st day of December, A. D. 1950.

[Seal] LEOTI V. KRONE,
Clerk, Supreme Court.

AFFIDAVIT REGARDING JURISDICTIONAL
AMOUNT

Territory of Hawaii,
City and County of Honolulu—ss.

Hung Chin Ching, being first duly sworn, on oath deposes and says:

That he is the petitioner-appellant in the above-entitled cause and Court; that if an accounting of profits as prayed for in the complaint is ordered in the said cause the petitioner-appellant would be entitled to recover about \$60,000.00; that in addition thereto the reasonable value of the business itself which petitioner seeks to recover is about \$20,000.00, of which petitioner is entitled to 10% or \$2000.00; that there is involved in the above-entitled cause a total amount of \$62,000.00 which petitioner-appellant would be entitled to recover if a decision and judgment favorable to the petitioner-appellant is entered in said cause upon final disposition of said cause; that this affidavit is made [78] on affiant's own knowledge; that he makes this affidavit for the purpose of supporting his appeal of the above-entitled cause to the United States Court of Appeals for the Ninth Circuit from the Supreme Court of Hawaii.

/s/ HUNG CHIN CHING.

Subscribed and sworn to before me this 30th day of November, A. D. 1950.

[Seal] /s/ FLORENCE Y. OKUBO,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires August 9, 1951. [79]

ORDER GRANTING LEAVE TO FILE AFFI-
DAVIT AS TO JURISDICTIONAL AMOUNT

It Is Hereby Ordered that the affidavit of Hung Chin Ching, petitioner-appellant, hereto attached, be filed in the records of this Court and cause.

Dated at Honolulu, T. H., this 1st day of December, A. D. 1950.

SUPREME COURT OF
HAWAII,

By /s/ LOUIS LE BARON,
Its Associate Justice.

[Endorsed]: Filed December 1, 1950. [80]

[Title of Court and Cause.]

BOND

Know All Men by These Presents, that Hung Chin Ching, of Honolulu, City and County of Honolulu, Territory of Hawaii, and a resident thereof, as Principal, and Hung Wai Ching and Hung Wo Ching, both of Honolulu, City and County of Hono-

lulu, Territory of Hawaii, and residents thereof, as Sureties, jointly and severally are held, firmly bound and indebted to the United States of America in the sum of Two Hundred Fifty Dollars (\$250.00) to be levied on our goods, chattels, lands and tenements, upon this condition:

Whereas, Hung Chin Ching, principal, has taken an appeal, as petitioner, from the Supreme Court of the Territory of Hawaii to the United States Court of Appeals for the Ninth Circuit, to reverse the judgment dated and entered in said cause on the 12th day of September, 1950, and the Order denying the Petition for Rehearing dated the 16th day of November, 1950. [81]

Now, Therefore, if the above bounden principal, petitioner, shall prosecute his appeal without delay and answer for and pay all costs if he fails to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

In Witness Whereof, the parties hereto have hereunto set their hands and seals this 2nd day of December, A. D. 1950.

/s/ HUNG CHIN CHING,
Principal.

/s/ HUNG WAI CHING,

/s/ HUNG WO CHING,
Sureties.

Territory of Hawaii,
City and County of Honolulu—ss.

Hung Wai Ching and Hung Wo Ching, sureties in the within bond, do severally solemnly swear that they have property situated within the Territory of Hawaii subject to execution and are worth in property within said Territory the amount of the penalty specified herein over and above all of their debts and liabilities.

/s/ HUNG WAI CHING,

/s/ HUNG WO CHING.

Subscribed and sworn to before me this 2nd day of December, A. D. 1950.

[Seal] /s/ FLORENCE Y. OKUBO,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires August 9, 1951. [82]

The foregoing bond is approved as to amount and sufficiency of sureties.

SUPREME COURT OF
HAWAII,

[Eeal] /s/ EDWARD A. TOWSE,
Its Associate Justice.

[Endorsed]: Filed December 6, 1950. [83]

[Title of Court and Cause.]

PETITION FOR APPEAL

To the Honorable Supreme Court of the Territory of Hawaii:

Comes now Hung Chin Ching, of Honolulu, City and County of Honolulu, Territory of Hawaii, appellant above named and petitioner herein, and deeming himself aggrieved by the Decision, Decree and Judgment of the Supreme Court of the Territory of Hawaii made and entered in the above-entitled cause on the 12th day of September, 1950, and by the denial of the petition for rehearing on the 16th day of November, 1950, for the reasons and grounds specified in the Assignment of Errors filed herein, does pray that this appeal may be allowed; that the Court do stay further proceedings in this cause pending the determination of the issues raised on said appeal; that the Court do set the amount of the penalty in the appeal bond, a copy of which is filed herein; and [84]

Petitioner does further pray that a transcript of the record and proceedings, more particularly set forth in the praecipe filed herein, upon which the said Decree was made, may be sent to the United States Court of Appeals for the Ninth Circuit; and that said Decree and Judgment may be reversed or otherwise corrected as to the said Court of Appeals may by the premises deem just and equitable.

Dated at Honolulu, T. H., this 2nd day of December, A. D. 1950.

HUNG CHIN CHING,
Appellant,

By /s/ SHIRO KASHIWA,
His Attorney.

[Endorsed]: Filed December 6, 1950. [85]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now Hung Chin Ching, Petitioner-Appellant above named, by Shiro Kashiwa, his attorney, and files the following Assignment of Errors, upon which he will rely in the prosecution of his appeal in the above-entitled cause to the United States Court of Appeals for the Ninth Circuit from the Decision, Decree and Judgment entered herein on the 12th day of September, 1950, and from the Order denying the Petition for Rehearing dated November 16th, 1950, heretofore filed in this cause:

I.

That the Supreme Court of Hawaii erred in sustaining the decision and decree of the trial court.

II.

That the Supreme Court of Hawaii erred in holding that there was no constructive trust relationship by and between the respondent-appellees and the

petitioner-appellant after the former acquired title to the restaurant business. [86]

III.

That the Supreme Court of Hawaii erred in holding that there was no partnership relationship existing in spite of the fact that the restaurant business was launched and in active operation from and after October 1, 1941.

IV.

That the Supreme Court of Hawaii erred in holding that the petitioner-appellant had no suit for an accounting when he already performed services and had a vested interest in the partnership.

V.

That the Supreme Court of Hawaii erred in completely disregarding the fact finding of the trial court that the petitioner-appellant was "squeezed out" by the respondents-appellees.

VI.

That the Supreme Court of Hawaii erred in completely disregarding the oral decision of the trial court which was perfectly consistent with the written decision; that the said oral decision amounted to a finding of fraud practiced by the respondents-appellees against the petitioner-appellant.

VII.

That the Supreme Court of Hawaii erred in not overruling the trial court's finding and conclusion that the partnership was never formed and that

it was a mere agreement to form a partnership when the evidence showed that there was an actual partnership in operation. [87]

VIII.

That the Supreme Court of Hawaii erred in holding for the respondents-appellees even though it failed to find that a demand was made by the respondents-appellees upon the petitioner-appellant.

IX.

That the Supreme Court of Hawaii erred in concluding that from the evidence adduced there was no showing of a partnership.

X.

That the Supreme Court of Hawaii erred in sustaining the fact findings of the trial court in so far as they were adopted by the said Supreme Court.

XI.

That the Supreme Court of Hawaii erred in making the following fact findings and conclusions upon the evidence adduced in the case:

“The record bears no recession or cancellation of the original agreement which entitled the petitioner to participate in the purchase conditioned upon the payment of his contributive share of \$3,000, by any or all of the respondents, or by the petitioner himself.” (Objectionable portion emphasized.)

XII.

That the Supreme Court of Hawaii erred in mak-

ing the following fact findings and conclusions upon the evidence adduced in the case:

“Under the oral agreement with the seller fixing the time of payment of the purchase price as October 1, 1941, a limitation of time for performance by the petitioner, during which he was to tender his contributive share, was fixed and agreed upon.” (Objectionable portion emphasized.) [88]

XIII.

That the Supreme Court of Hawaii erred in making the following fact findings and conclusions upon the evidence adduced in the case:

“In addition to the fact that the experimental period of operation by the party purchasers was to terminate on October 1, 1941, during which period the petitioner had ample opportunity to tender his contributive share, the evidence further discloses that the sale, by way of execution of all requisite documents and transfers, was not consummated until October 20, 1941, retroactive to October 1, 1941. The petitioner was, by operation of time and with the acquiescence of the respondents, gratuitously accorded an extra period of dispensation in which to tender his contributive share. During this twenty-day period of additional concession, the petitioner failed to perform, and has not, in our opinion and as found by the trial judge, established any valid reason for his default.” (Objectionable portion emphasized.)

XIV.

That the Supreme Court of Hawaii erred in making the following fact findings and conclusions upon the evidence adduced in the case:

“The letter of October 6, 1941, from Fook Hing Tong to the petitioner, fourteen days prior to the actual consummation of the sale, contains an affirmance that the original agreement between all party purchasers, including the petitioner, was still in effect, though the trial period and the due date of the purchase price on October 1, 1941, expired six days prior thereto. The period within which the petitioner could have tendered his contributive share was thereby extended to October 20, 1941. Of this extension of time in which to perform, the petitioner was also given notice.” (Objectionable portion emphasized.) [89]

XV.

That the Supreme Court of Hawaii erred in making the following fact findings and conclusions upon the evidence adduced in the case:

“The purchase price was payable by the party purchasers on October 1, 1941. The petitioner, as a party to that oral agreement, was aware of and so bound, as were all the party purchasers, by this due date of payment.” (Objectionable portion emphasized.)

XVI.

That the Supreme Court of Hawaii erred in mak-

ing the following fact findings and conclusions upon the evidence adduced in the case:

“The record further discloses that petitioner’s right of contribution was expressly conditioned upon tender of his contributive shares as agreed upon. This he failed to do.” (Objectionable portion emphasized.)

XVII.

That the Supreme Court of Hawaii erred in making the following fact findings and conclusions upon the evidence adduced in the case:

“The respondents, upon petitioner’s default, contributed the sum of \$25,000, which was paid to the sellers as the purchase price of the business as agreed upon. They thereupon formed and registered a copartnership between themselves excluding the petitioner, to the end that they, as the remaining party purchasers, would be qualified to render continuity to the operation of the business in conformance with the attending legal requisites. The petitioner failed to tender his contributive share to the enterprises and has given no valid excuse for failing to do so, and was thereby precluded from participating therein as a result of this failure. He [90] has further failed, in this court’s opinion upon review of the record, to establish his asserted right to be presently included as a member of the copartnership formed on October 20, 1941, retroactive to October 1, 1941.” (Objectionable portion emphasized.)

XVIII.

That the Supreme Court of Hawaii erred in making the following fact findings and conclusions upon the evidence adduced in the case:

“The respondents, on the contrary, violated no confidence the petitioner reposed in them, violated no oral agreement entered into between the original party purchasers, displayed no bad faith, nor practiced or perpetrated fraud upon the petitioner in respect of his exclusion from membership in the registered copartnership. They elected to adhere to their original agreement as party purchasers and pursuant thereto contributed their respective shares as agreed upon. They further acquiesced in and accorded the petitioner the extended period of grace above referred to during which time he also failed to perform. He admittedly defaulted.”
(Objectionable portion emphasized.)

XIX.

That the Supreme Court of Hawaii erred in making the following fact findings and conclusions upon the evidence adduced in the case:

“Upon the entire record on review, whether or not the original oral agreement between the parties to the proceeding constituted a copartnership or joint adventure binding them with the legal incidents flowing therefrom, is not pertinent to the disposition of the issues of facts presented which are determinative of the

sole question presented on appeal.” (Objectionable portion emphasized.) [91]

XX.

That the Supreme Court of Hawaii erred in affirming the following fact finding of the trial court:

“The respondent Fook Hing Tong then being on the island of Maui, replied to both the petitioner and respondent Chong Hing Tenn on October 6, 1941, and expressly reaffirmed the oral agreement among the party purchasers and reassured the petitioner that he was to share in the business to the extent of a three-share interest upon the express condition that he make contribution of the amount representing his three-share interest as agreed upon.” (Objectionable portion emphasized.)

Wherefore, petitioner-appellant prays that because of the errors hereinabove assigned, the Decree and Judgment entered in this cause on the 12th day of September, 1950, and the Order denying the petition for rehearing dated the 16th day of November, 1950, be vacated, reversed and corrected.

Dated at Honolulu, T.H., this 2nd day of December, A.D. 1950.

HUNG CHIN CHING,
Appellant.

By /s/ SHIRO KASHIWA,
His Attorney.

[Endorsed]: Filed December 6, 1950. [92]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL

Upon filing by the petitioner-appellant, Hung Chin Ching, of a bond in the sum of \$250.00 with good and sufficient sureties, the appeal in the above-entitled cause is hereby allowed.

Dated at Honolulu, T.H., this 6th day of Dec., A.D. 1950.

SUPREME COURT OF HAWAII,

[Seal] By /s/ EDWARD A. TOWSE,
Its Associate Justice.

[Endorsed]: Filed December 6, 1950. [93]

[Title of Court and Cause.]

NOTICE OF APPEAL

To Fook Hing Tong, Chong Hing Tenn and Kui Hing Tenn, Appellees Above Named, and Robertson, Castle & Anthony, Their Attorneys:

You and each of you are hereby notified that an appeal has been taken from the Decree and Judgment entered herein on the 12th day of September, 1950, and from the Order denying the Petition for Rehearing made and entered on the 16th day of November, 1950, heretofore filed in this cause.

Dated at Honolulu, T.H., this 2nd day of December, A.D. 1950.

HUNG CHIN CHING,

Appellant,

By /s/ SHIRO KASHIWA,

His Attorney.

[Endorsed]: Filed November 6, 1950. [94]

[Title of Court and Cause.]

CITATION ON APPEAL

The United States of America—ss.

The President of the United States of America to:
Fook Hing Tong, Chong Hing Tenn and Kui
Hing Tenn, and to Robertson, Castle & An-
thony, Their Attorneys:

You are hereby cited and admonished to be and appear at the United States Court of Appeals for the Ninth Circuit at the City of San Francisco, State of California, within forty (40) days from the date of this citation, pursuant to an order allowing appeal, filed in the office of the Clerk of the Supreme Court of the Territory of Hawaii, wherein Hung Chin Ching is the Petitioner-Appellant and you Fook Hing Tong, Chong Hing Tenn and Kui Hing Tenn are Respondents-Appellees, to show cause, if any you have, why the Decree in such appeal mentioned and the order denying rehearing should not be corrected and reversed, and

why speedy justice should not be done to the parties herein. [95]

Witness, the Honorable Edward A. Towse, Associate Justice of the Supreme Court of the Territory of Hawaii, this 6th day of December, A.D. 1950.

SUPREME COURT OF
HAWAII,

[Seal] /s/ EDWARD A. TOWSE,
Associate Justice.

[Endorsed]: Filed December 6, 1950. [95-A]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD
TO UNITED STATES COURT OF AP-
PEALS FOR NINTH CIRCUIT

To the Clerk of the Above-Entitled Court:

You will please prepare transcript of record of this cause to be filed in the Office of the Clerk of the United States Court of Appeals for the Ninth Circuit and include in said transcript the following pleadings and papers on file, to wit:

1. Petitioner's Bill to Declare Trust and Lien, for an Accounting, for Receiver, and for Money Judgment, filed April 5, 1944. (Omit: Motion for Order to Show Cause, Order to Show Cause, Chamber Summons, and Sheriff's Return.)
2. Fourth Amended Bill to Declare Trust and

Lien, for an Accounting, for Receiver, and for Money Judgment, filed November 5, 1947.

3. Answer to Fourth Amended Bill to Declare Trust and Lien, for an Accounting, for Receiver, and for Money Judgment, filed June 16, 1948.

4. Clerk's Minutes.

5. Decision, filed August 25, 1948.

6. Decree, filed September 2, 1948. [96]

7. Appeal and Notice of Appeal, filed September 9, 1948.

8. Transcript No. 1077.

9. The following Exhibits:

- a. Petitioner's Exhibit A
- b. Petitioner's Exhibit A-1
- c. Petitioner's Exhibit B
- d. Petitioner's Exhibit C
- e. Petitioner's Exhibit D
- f. Petitioner's Exhibit E
- g. Petitioner's Exhibit F
- h. Petitioner's Exhibit G
- i. Petitioner's Exhibit H
- j. Petitioner's Exhibit I
- k. Petitioner's Exhibit J
- l. Respondent's Exhibit I
- m. Respondent's Exhibit II
- n. Respondent's Exhibit III
- o. Respondent's Exhibit IV

10. Amendment to Brief (Appellant's), filed March 9, 1950.

11. Opinion of Court, filed August 18, 1950.

12. Notice of Decision on Appeal, filed September 12, 1950.

13. Petition for Rehearing, filed September 27, 1950.

14. Decision (Petition for Rehearing), filed November 16, 1950.

15. Notice of Intention to Appeal and Motion for Order Withholding Mandate to the Circuit Court of the First Judicial Circuit, Territory of Hawaii, and Affidavit, filed November 22, 1950.

16. Order (Staying Mandate to Circuit Court), filed November 22, 1950.

17. Petition for Appeal.

18. Notice of Appeal.

19. Bond.

20. Order Allowing Appeal.

21. Assignment of Errors.

22. This Praecipe for Transcript of Record. [97]

23. Citation on Appeal.

24. Motion to File Affidavit, Affidavit (Appellant's Counsel's) and Affidavit (Appellant's).

25. Order Granting Leave to File Affidavit.

26. Receipt by Respondents Appellee's Counsel of papers listed in items 15 to 25 of this praecipe.

In preparing above items 1-7 and 10-26, inclusive, Clerk will omit Title of Court and Cause.

Said transcript to be prepared as required by law, and the rules of this Court, and the rules of the United States Court of Appeals for the Ninth Circuit, and filed in the Office of the Clerk of said Court of Appeals at San Francisco, in the State of California, before expiration of period fixed by law for filing the record on appeal.

Dated at Honolulu, T.H., this 2nd day of December, A.D. 1950.

. HUNG CHIN CHING,
Appellant,

By /s/ SHIRO KASHIWA,
His Attorney.

[Endorsed]: Filed December 6, 1950. [98]

[Title of Court and Cause.]

RECEIPT OF COPIES
CERTIFICATE OF ACKNOWLEDGMENT

The undersigned hereby acknowledge receipt of copies of the following:

1. Notice of Intention to Appeal and Motion for Order Withholding Mandate to the Circuit Court of the First Judicial Circuit, Territory of Hawaii, and Affidavit filed November 22, 1950.
2. Order (Staying Mandate to Circuit Court) filed November 22, 1950.
3. Petition for Appeal.
4. Notice of Appeal.
5. Bond.
6. Order Allowing Appeal.
7. Assignment of Errors.
8. Praecipe for Transcript of Record.
9. Citation on Appeal.
10. Motion to File Affidavit, Affidavit (Appellant's Counsel's) and Affidavit (Appellant's). [99]
11. Order Granting Leave to File Affidavit.

Dated at Honolulu, T.H., this 7th day of December, A.D. 1950.

ROBERTSON, CASTLE &
ANTHONY,

Attorneys for Appellees,

By /s/ ROBERT E. BROWN.

[Endorsed]: Filed December 7, 1950. [100]

[Title of Court and Cause.]

STATEMENT OF POINTS
DESIGNATION OF PARTS OF RECORD

Comes now Hung Chin Ching, Appellant herein, by his attorney, Shiro Kashiwa, and in compliance with subdivision 6 of Rule 19 requiring a concise statement of the points on which Appellant intends to rely on the appeal, hereby adopts as the points on appeal the assignment of errors appearing in the transcript of the record, and in compliance with the rules of this Court pertaining to the designation of the portion of the record to be printed, directs that the entire record on appeal, as set forth in the praecipe heretofore filed with the Clerk of the Supreme Court of the Territory of Hawaii, with the request that copies of the record as so designated be prepared and transmitted to this Court, be printed as the record on review.

Dated at Honolulu, T.H., this 18th day of December, A.D. 1950.

HUNG CHIN CHING,

Appellant,

By /s/ SHIRO KASHIWA,

His Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed December 18, 1950.

In the Circuit Court of the First Judicial Circuit
Territory of Hawaii

No. E-4416

HUNG CHIN CHING,

Petitioner,

vs.

FOOK HING TONG, CHONG HING TENN, and
KUI HING TENN,

Respondents.

Transcript of testimony taken and proceedings had before the Honorable Willson C. Moore, Circuit Judge, at Honolulu, T. H., in the above-entitled cause, commencing on June 21, 1948.

Appearances:

HERBERT K. H. LEE, ESQ., and
DAVID R. CASTLEMAN, JR., ESQ.,
Appearing on Behalf of Petitioner.

THOMAS WADDOUPS, ESQ.,
Appearing on Behalf of Respondents.

PROCEEDINGS

June 21, 1948—9:00 o'Clock A.M.

(Upon the clerk calling the case, the following occurred:)

Mr. Lee: Ready for the petitioner.

Mr. Waddoups: Ready for the respondents.

The Court: Proceed.

(An opening statement was then made by Mr. Lee on behalf of the petitioner.)

Mr. Lee: I would like to call Dr. Tong to the stand, please.

The Court: Under the Statute?

Mr. Lee: Yes.

FOOK HING TONG

a respondent herein, called as a witness by the petitioner under the Statute, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lee:

Q. Please state your name.

A. Fook Hing Tong.

Q. You are a licensed physician? A. Yes.

Q. Practicing medicine in the Territory?

A. Yes.

Q. Do you know the petitioner, Hung Chin Ching? A. Yes.

Q. How long have you known him?

(Testimony of Fook Hing Tong.)

A. I first met him when I was working at the Emergency [2*] Hospital in 1939.

Q. At the time Mr. Ching was on the police force? A. Yes.

Q. Was it because of some of these emergency cases that came into the Receiving Hospital that you first met him or was it through social contact?

A. Well, it was the emergency cases; later on socially.

Q. Now, Doctor, did you practice medicine in the County of Maui? A. No, sir.

Q. Did you ever live on Maui? A. Yes.

Q. When did you live on Maui?

A. I was in the National Guard then, we were transferred to Maui June, 1941.

Q. How long did you stay on Maui?

A. I don't know exactly, I think it was about——

Q. Approximately, Doctor.

A. 1941 to 1942, I think.

Q. Was it about the latter part of 1942 or the middle? A. The early part of 1943.

Q. The early part of 1943? A. Yes.

Q. Now, Doctor, prior to 1941, did you have any interest in any liquor business prior to this Green Mill transaction?

A. Well, there was several of them that came up during this time.

The Court: Now, the question is whether you were [3] in the liquor business before this time?

A. No. I was not.

(Testimony of Fook Hing Tong.)

Q. Now, some time in September, 1941, the early part of 1941, did you have any conversation with the petitioner, Hung Chin Ching, with regard to going in to the liquor business together?

A. You mean in September?

Q. Or prior thereto? A. No. I did not.

Q. You didn't have any. Did you have any conversation with Mr. Ching subsequent to September, 1941, about entering into the liquor business?

A. Yes. I did.

Q. What time was that? What date was that?

A. Well, the latter part of the month, I think.

Q. The latter part of September? A. Yes.

Q. Now, where did you have this conversation with Mr. Ching? A. At my home.

Q. At your home? A. Yes.

Q. And who was present at the time?

A. There was my two brothers, and my father there.

Q. Now, didn't you, Doctor Tong, have any separate conversation with Mr. Ching prior to this conference at your home with your brothers and your father, concerning about entering into business? A. No. [4]

Q. How did it come about that you met with Mr. Ching and your family at your home at the time?

A. Mr. Ching dropped in that evening. We were discussing the purchase of the Green Mill. We heard remarks that it was for sale.

(Testimony of Fook Hing Tong.)

Q. All right, tell the court what took place at that conversation that night.

A. Mr. Ching came in. I guess he was going to take me out or something that night. We asked him if he knew the proprietor of the Green Mill. We wanted to know if it was just a remark or whether it was really for sale. I asked Mr. Ching if he knew Mr. Lum, the proprietor. He said that he knew him, and I told him I would like to go to meet the owner of the place and verify it to know whether it was really for sale or not.

Q. Doctor, it is—this is some time ago, and I ask you this question, let's see if you remember. Do you remember a conversation about the Riverside Grill with Mr. Ching, around September, 1941?

A. Yes. I remember it.

Q. Was that prior to your conversation with your family at your home concerning the Green Mill?

A. No. It was after.

Q. It was after? A. Yes.

Q. How long after?

A. I wouldn't say very long. I think it was three or four days. [5]

Q. Three or four days after? A. Yes.

Q. You are sure?

A. I am sure it was after I contacted the owner. I don't know how many days after. I know I was down here on leave about four or five days. It couldn't be very far—

Q. It was pretty close, is that it? A. Yes.

Q. You feel, or you are sure that it was after?

(Testimony of Fook Hing Tong.)

A. That is the time that I got interested in the purchase.

Q. Weren't you interested in the purchase, prior to the purchase of the Green Mill, of the Motor Coach Cafe?

A. That was approached to me. I wasn't interested in it.

Q. I mean at the time—in other words, there had been previous conversations to you on the liquor business by someone?

A. Yes. I heard remarks about it, call it a purchase, or what not, previous to that, but I wasn't interested in it.

Q. What else was talking about, if anything, at your home between your family and Mr. Ching, besides knowing Mr. Lum?

A. Well, he took us out to see Mr. Lum.

Q. No. Before that, wasn't there any—that was the only thing discussed?

A. We couldn't discuss anything, because we didn't know whether it was really for sale or not.

Q. I see. What happened then?

A. The next thing, Mr. Ching offered to introduce us to the owner.

Q. Well, did Mr. Ching do that? [6]

A. He took us up there.

Q. He took you up to Mr. and Mrs. Lum?

A. Yes, introduced us.

Q. What?

A. He introduced us to Mr. Lum.

Q. And who else was present at the Lum home?

(Testimony of Fook Hing Tong.)

A. Well, there was my father accompanied us along.

Q. All your brothers, were they present?

A. I had a chance acquaintance with Mr. Lum. I knew him. We asked if he was interested in selling his place. We heard that there was a rumor that he wanted to sell, partly social, partly business. We got acquainted with him. In that way he observed the fact that we should see his attorney.

Q. Did he suggest that you see his attorney?

A. Yes, if it was we really meant business, or anything like that.

Q. Was there anything else discussed about price?

A. I think something like \$25,000, plus the inventory.

Q. You don't recall whether the price that he (Lum) asked was \$30,000?

A. No. \$25,000, plus inventory.

Q. That was all that was discussed at the Lum home?

A. That's all, he referred us to his attorney.

Q. What happened next?

A. Next we went back to the house, to my home there.

Q. That means your father, your brothers, and Mr. Ching?

A. And we discussed how we were going to raise that money. I asked Mr. Ching if he wanted to come in, and he said, "Yes. [7] How much?" He

(Testimony of Fook Hing Tong.)

said, "\$3,000." Well, that was the only business nature that was talked; get the money if he wanted to come in. Mr. Ching asked me if I could loan him \$3,000 myself; I would finance him on that. I told him, I said, "Well, your brothers, why don't you ask your brothers if they would finance you?" Why didn't he ask his brothers. Well, he said——

Q. By the way, that was the same night?

A. Yes. That was the same night.

Q. At the time that you called to see Mr. Lum?

A. Oh, that was the early part of the evening.

Q. Was that the next night?

A. No. When we come back from his place.

Q. The same night? A. Yes.

Q. What date was this?

A. I don't know. I remember somewhere around the 24th of September, because I came down to the football game, or something like that. I remember that game. I came down on a five-day pass.

Q. That was when all this took place?

A. It was that evening.

Q. What else took place, if anything?

A. All I can remember now—it is so long ago—is that Mr. Ching had no finances. He was trying to induce me to finance him on the thing. I told him if he wanted to get in, he must take the risk, at least show good faith by putting his money in.

Q. Was this all said to him at the time? [8]

A. I told him—well, subsequently he had been after me all that time until the 12th.

(Testimony of Fook Hing Tong.)

Q. We are just talking about that night. Please try and confine yourself to that.

A. I told him that, I remember, that night.

Q. In other words, you asked Mr. Ching whether he wanted to come into the business? A. Yes.

Q. He said, "Yes"? A. Yes.

Q. And you asked him, "How much?"

A. I asked him, "How much?"

Q. And he said, "\$3,000." A. Yes.

Q. He was to put up \$3,000?

A. He was to put up \$3,000.

Q. That was understood? A. Yes.

Q. Isn't it the fact that you folks had not purchased the business yet?

A. No. We were trying to find the money.

Q. Who was to put up the balance of this \$25,000?

A. Well, there was the balance with the three of us.

Q. What was the understanding?

A. The understanding that we were to put up \$22,000.

Q. \$22,000. Who was to put up the \$22,000?

A. Well, my brothers and myself.

Q. Did you people have an agreement as to how much each [9] was to put up?

A. Yes. We had some kind of an agreement, each to put up as much as he can, that he can collect, borrow, or something like that, to get the \$25,000.

Q. How much were you supposed to put up?

(Testimony of Fook Hing Tong.)

A. Well, it isn't how much I was supposed to, it was how much I had.

Q. Well, how much did you have?

A. Well, about \$10,000.

Q. Now, did your other brother, anyone of them state how much the other had, how much they were going to put in?

A. One brother had \$10,000.

Q. Which brother had \$10,000, Chong Hing Tenn?
A. Chong Hing Tenn.

Q. What about the others?

A. He said that he could raise about \$5,000, \$3,000.

Q. You were supposed to put up—Chong Hing Tenn was supposed to put up \$10,000?

A. The other brother supposed to put up \$5,000. He had \$5,000. He took the rest of the \$3,000.

Q. What took place next after that conversation at your home?

A. All I can remember, Mr. Ching was after me to help finance the \$3,000; wanted me to carry him.

Q. Didn't you go back to Maui?

A. A few days after.

Q. How many days?

A. I had four or five days' leave here. [10]

Q. So, in other words, up to September 29?

A. I can't recall the date definitely.

Q. Did you state that you thought that the meeting was September 24, about?

A. Somewhere around there, yes.

(Testimony of Fook Hing Tong.)

Q. Was that after you had seen the football game, or prior? A. Well, I guess after.

Q. How many days had you been in Honolulu prior to this conversation at the home?

A. I think about three or four days.

Q. Three or four days? A. Yes.

Q. So how many days after this conversation did you stay here?

A. It might be about three days.

Q. You stayed in Honolulu altogether over a week?

A. The 24th was the football game. If I came on that day, I had a five-day leave. It would be about the 29th.

Q. That is why I asked you.

A. I wouldn't be sure of the definite date.

Q. That is what I am trying to see, if you recall, as near as possible, as to whether or not you had arrived at Honolulu prior to the football game on September 24. Do you recall whether you did or not? A. I don't recall that.

Q. Could you have been here, as you stated a little while ago on your examination, that you were here three or four days before this conversation at your home? A. I don't get you. [11]

Q. Well, you stated in this conversation, it was approximately September 24, is that right?

A. Yes.

Q. You also stated that you were in Honolulu three or four days before this conversation took place? A. No.

Q. You were not?

(Testimony of Fook Hing Tong.)

A. I wasn't sure whether I was ahead on that date.

Q. You are not sure whether you were here three or four days before?

A. Or after that time.

Q. Are you sure that you had not gone to Maui after this conversation; gone back to Maui?

A. No. I am sure I had stayed a few days and then I left for Maui.

Q. Would you say one or two days?

A. Maybe.

Q. Was it during those one or two days that you and Mr. Ching went over to see Mr. Wong?

A. It may be one of those two days; two or three days.

Q. Do you recall what the purpose of that trip to Mr. Wong was?

A. Yes. I recall. I recall seeing Mr. Wong.

Q. Do you recall asking Mr. Wong—let me put it this way: Tell us what you recall about the conversation with Mr. Wong?

A. I recall the conversation alone with Mr. Wong.

Q. Alone, you say? [12]

A. Mr. Ching was there, but then on the side I talked to Mr. Wong.

Q. Mr. Ching was with you?

A. He brought me there.

Q. He brought you there? A. Yes.

Q. You were sitting at one of the tables, and you were talking to Mr. Wong on the side?

A. Mr. Ching was doing all the talking, until

(Testimony of Fook Hing Tong.)

I went to the bathroom. I asked Mr. Wong how was the liquor business. I asked him whether it was a good venture or not.

Q. What was Mr. Ching doing all the talking for? What did he talk about to Mr. Wong?

A. He tried to find out whether, tried to find out what or how the liquor business was running. We were just merely social, having a drink there.

Q. You and Mr. Ching were both interested in finding out the same thing, finding out whether the liquor business was profitable?

A. Well, whether it was profitable. At the same time—of course, I didn't know how to handle the business, neither does Mr. Ching, but we want to know how he did it.

Q. Well, you wanted to have Mr. Ching tell something about the liquor business, so that you could become familiar with it?

A. How much headache you have to have, taking care of the people when they get intoxicated, and all that, whether he had much trouble in it or not.

Q. Didn't you and Mr. Ching ask Mr. Wong whether or not [13] he knew of any good liquor business for sale?

A. I don't recall that.

Q. You don't recall that. He might have, or you people might have, and then again you might not, you can't recall?

A. I can't recall.

Q. Then, was it understood—let me put it this way: Did you people purchase the business before you went back to Maui?

(Testimony of Fook Hing Tong.)

A. No. We were still looking for money.

Q. Still looking for money. In other words, not only Ching's money, but your money—your own money; your brother's money; still looking for money?

A. I left so much money deposit there, but we had to find the rest. I just put my \$10,000 in my brother's hands there. They can go along with the business.

Q. In other words, you people had not purchased the business prior to your going back to Maui, that's correct?

A. Well, we made an agreement to buy it. We made some kind of an agreement by Mr. Fong, that we were interested in buying it. Well, you have to put down the money.

Q. Tell me about this agreement with Mr. Fong.

A. I don't know, because I wasn't here. I just left my money in charge of my brothers and left. I didn't know anything about it.

Q. That is why I am asking. Did you people close the deal? In other words, before you went back to Maui, did you close the deal in the purchase of the business?

A. No. The deal wasn't closed yet. [14]

Q. As you state, you people were still looking for the money. In other words, still looking for that \$22,000 on your part, besides Ching's \$3,000?

A. Well, we had all the money, I think. For myself I had \$10,000.

Q. We know about you. You had \$10,000, but

(Testimony of Fook Hing Tong.)

your brothers were looking for the money, too, weren't they?

A. Maybe. I don't know. But that was the down payment, I think. There was something like that. I don't quite recall. The purchaser had to put up the deposit or something like that. I don't recall that. I wasn't there. Whether it was definitely closed, or in the process of being closed, I don't know.

Q. It was understood it was left—all these finance matters—in your brother's hands, Chong Hing, isn't that right?

A. Yes, some time speak to an attorney to take care of.

Q. That was before you left?

A. Before I left.

Q. Now, what was this conversation that you had with the attorney?

A. For the drawing of the papers for the purchase of the place.

Q. Did you people agree on the price?

A. That is what Mr. Lum had agreed on the price.

Q. \$25,000?

A. \$25,000, plus the inventory.

Q. Who was present at this conversation with Mr. Fong, that [15] you had with him?

A. I don't recall who was present.

Q. Was the conversation at Mr. Fong's office?

A. Yes.

Q. Did you go up alone to see him?

(Testimony of Fook Hing Tong.)

A. I don't recall. I just told him we were interested in buying that place there, that he do business with my brother.

Q. Did you sign anything before you left for Maui in Mr. Fong's office, or anywhere else?

A. No. I didn't sign anything.

Q. Now, this option or agreement to purchase, did you sign that?

A. Later on I signed it.

Q. When did you sign it?

A. I think it was after the middle of the month of October.

Q. The middle of October? A. Yes.

Q. Was it about October 10? A. No.

Q. Was it about October 20, when you were registered?

A. It was previous to that. It was around the 15th.

Q. About the 15th of October that you signed the option, agreement to purchase?

A. No. I think it was the purchase.

Q. I didn't hear you.

The Court: "I think it was a purchase."

Q. Oh, it was a purchase? A. Yes.

Q. In other words, there was no option to purchase agreement? [16]

A. I don't know whether you call it an option. You agree to buy and you put so much money down.

Q. When did you put so much money down?

(Testimony of Fook Hing Tong.)

A. I left it up to my brother. I gave him the money. That's all I know about it.

Q. Speaking about the agreement, the thing that you came down to sign——

A. I didn't come down.

Q. Did they send it up to you?

A. It was.

Q. During this time, up to October 15, were you people operating the business at the Green Mill?

A. From what I gather in the first, I think we were supposed to take the business over for trial, for a couple of weeks. I guess the only thing that was holding it up was the transfer of the liquor license.

Q. During that time the inventory was taken?

A. I don't know.

Q. Do you know, Doctor, when the application for the transfer of the liquor license was made?

A. I don't recall.

Q. Do you know when the granting of the transfer of the liquor license was made?

A. Some time during that money. I don't know the exact date.

Q. Do you recall whether or not it was granted October 10, 1941.

A. I don't know. I wasn't here. [17]

Q. Now, did you come back to Honolulu from Maui after this understanding and agreement between your brothers and Mr. Ching on this deal? Did you come back in the month of October?

A. I don't remember. I don't recall that.

(Testimony of Fook Hing Tong.)

Q. Do you recall signing partnership papers with your brother? A. Yes, I do.

Q. Did you sign it before you left Honolulu for Maui?

A. No. I believe I signed it in front of the notary in Maui.

Q. In Maui. Do you recall when you received these papers for partnership?

A. I recall. I don't know the date.

Q. You recall receiving them?

A. I recall receiving them and going to the notary and signing them and what not.

Q. Did you read the articles of partnership?

A. I did.

Q. Did you notice that Mr. Ching's name was left out? A. I know it was left out.

Q. You know it was left out? A. Yes.

Q. It was no surprise to you?

A. No, there was no surprise to me.

Q. How did it come about that you knew that Mr. Ching's name was to be left out?

A. He came up himself, and the telephoned to verify—whether I would carry him over or not; whether I would assure his [18] finances.

Q. You mean that he telephoned you?

A. He telephoned to me and came up himself.

Q. Do you recall that he came up October 21?

A. Well, my recollection is during—on the 12th of October.

Q. The 12th of October? A. Yes.

(Testimony of Fook Hing Tong.)

Q. The partnership agreement was already signed and executed as of October 1, wasn't it?

A. No.

Q. Sure about that?

A. We couldn't do anything, because we didn't know that the liquor license was transferred.

Q. Have you got a copy of that partnership agreement? A. I haven't got it.

Mr. Waddoups: I will undertake to find it.

Mr. Lee: What's that?

Mr. Waddoups: I will undertake to get one.

The Court: We will take a recess at this time.

(Recess.)

Q. Now, Doctor, as I get it, before you left for Maui, you had left \$10,000 with your brother?

A. No. I left it with Kui Hing.

Q. Kui Hing? A. Yes.

Q. Who was supposed to run the business, was it Kui Hing or Ching?

A. Well, Ching was supposed to run it, but I had to leave my [19] money with somebody.

Q. So you left it with Hui Hing? A. Yes.

Q. That was \$10,000? A. \$10,000.

Q. Now, when you left that \$10,000 with Kui Hing, did he have any money of his own?

A. I don't know.

Q. You don't know? A. It is up to him.

Q. This conversation that you had with Hiram Fong, did you or your brother place a deposit on the purchase of this Green Mill with him?

(Testimony of Fook Hing Tong.)

A. What I know, I think he placed the deposit, but I don't know.

Q. You didn't have any part of it?

A. So far as the business on that.

Q. Did you receive a letter from Mr. Ching regarding the misunderstanding that he had with Chong Hing?

A. Yes. I received a letter from him.

Q. Do you recall what that letter was about?

A. It is too far back now. I don't recall.

Q. At the time, do you recall that the substance of that letter was that he wanted to be reassured of his interest in the Green Mill?

A. Not his interest. I think there was something previous to that that I spoke to Mr. Ching. As a friend, I told him to take a look around there and see how business was; to help [20] around in his capacity. I didn't know whether the bar people get intoxicated, or something like that, for him to take a look around there.

Q. So, in other words, one of the reasons for you investing in the business was the fact that Ching was to be connected with the business, isn't that right?

A. If he could come in, if he could pay his way.

Q. Wasn't it very important to you that Ching was in the business also, at the time that you decided to go into the business?

A. In what capacity?

Q. As a partner.

A. He had no money. He had no experience.

(Testimony of Fook Hing Tong.)

Q. I see. Well, now, we are taking the situation back before you decided to buy this place. Don't look at it now, but look at it back at the time.

Mr. Waddoups: What was that question, please?

(Question repeated by the reporter.)

Q. Wasn't it the fact that Ching was to be a partner in the business one of the principal reasons why you decided to go into the purchase of the Green Mill, where before you were not interested in purchasing the Motor Coach Cafe?

A. No. He wasn't the deciding factor in the purchase of the Green Mill.

Q. Very sure of that?

A. I know the gentleman. I am sure.

Q. How did it happen that you didn't go into the Motor Coach Cafe before Ching came into the business? [21]

A. Simply because of the element of finances.

Q. It was just a little before the Green Mill, wasn't it, a few months?

A. I don't recall how previous the Motor Coach was.

Q. Well, at any rate, Doctor, you recall writing a letter to Mr. Ching on October 6, 1941, in response to your letter? A. Yes.

Q. I will show you a letter dated October 6, 1941, mailed from Wailuku, Maui, as on that day. Do you recall writing this letter?

A. Yes. I recall it. Can I read the whole thing?

Q. Yes. Please take your time.

A. I recall it now.

(Testimony of Fook Hing Tong.)

Q. You are also known by the nickname "Bear Tong"? You were a star football player, and you used to be called "Bear," and that is how you signed this name, "Bear"? A. Yes.

Q. These notes are in your handwriting, signed "B"? A. Yes.

Q. In this letter you mentioned you enclosed a copy of a letter which you wrote to Chong Hing?

A. Yes. I don't know whether there is a copy here.

Q. Well, your attorney has it. A. Yes.

Q. You wrote this letter?

A. I wrote that letter after I received his letter. Now I recall what he wrote about.

Q. Do you recall? Will you tell the court what you recall. [22]

A. Well, previous to the letter there, I had spoken to Mr. Ching. Mr. Ching and I were talking, and he told me that he was a little shaky in his department. His job was very precarious. I told him, well, I could let him—he could work for us. In the meantime I told him to go up to the Green Mill and look it over.

Q. When was this conversation that you had with Mr. Ching?

A. It is previous—at the period when I came down here, about the 24th of September.

Q. Was that before the conversation that you had at your home with all the brothers or after?

A. After.

(Testimony of Fook Hing Tong.)

Q. It was, in other words, it was during the one or two days that you were here, after that conversation?

A. I couldn't take him over for the partnership at \$3,000. The next best thing was to give him a position.

Q. Are you sure about that? Is that your recollection?

A. Well, so far as the time element, I am not sure.

Q. You are not sure?

A. But the impression, and the import of that at the time.

Q. There are several things which I want to call your attention to. You testified that you left \$10,000 with your brother Kui Hing. This letter states that you left \$15,000. Which is correct.

A. I think I left \$10,000. \$15,000 is incorrect.

Q. You think that the letter you wrote—the \$15,000 is incorrect, you think it was \$10,000.

A. Yes, \$10,000. [23]

Q. Now, do you recall what salary that Mr. Hung Chin Ching was supposed to receive for his managing or helping manage the business.

A. He went in the capacity as a friend. He wasn't hired. We didn't own the place yet. I told him just go over and take a look, and see what his impression was; represent me.

Q. You just made the statement that so far as you were concerned, Mr. Ching was to have no interest in the business, is that correct.

A. That is my understanding. I told him di-

(Testimony of Fook Hing Tong.)

rectly he had no money to put in, I couldn't put him in as a partner or anything. I wouldn't stand for the financing.

Q. That was one or two days after the conversation at your home? A. Yes.

Q. Now, I call your attention to this fact in your letter, and I will read it briefly—the particular points I call your attention to: “Received your letter this noon and was glad to hear from you but I am very sorry to hear that my brothers are giving you a hell of a lot of trouble on this damn business.”

Mr. Waddoups: May I suggest that you have the letter identified by an exhibit number, so that——

Mr. Lee: Very well. I would be very glad to. Could these be identified? There are two of them together. They are petitioner's exhibits.

The Court: All right, the letter dated 10/6/41——

Mr. Lee: October 6, 1941.

The Court: ——would be Petitioner's Exhibit A for identification, and the copy of the enclosure will be Exhibit [24] A-1.

(The documents heretofore referred to were marked Petitioner's Exhibit A, and A-1 for identification.)

Q. In Petitioner's Exhibit A, for identification, I will read this portion for your attention: “Hello HC: Received your letter this noon and was glad to hear from you but I am very sorry to hear that

(Testimony of Fook Hing Tong.)

my brothers are giving you a hell of a lot of trouble on this damn business. Don't be surprised that I expected that and was very reluctant to let things go as it is. Anyway, I guess since I am the heaviest stockholder and I know that you were instrumental in getting the business for us I feel that it would be okeh as long as you were able to take the business and manage it. I know that I wouldn't put \$15,000 for nothing, knowing that it is a gold mine, but hell, if you ditch the place there won't be any of that money that I will ever smell. I know those brothers of mine, and that is one reason why I didn't back them up the last time when they wanted the Motor Coach Cafe. Now the trouble is up again.

"Here is the proposition, as was stated verbally that you handled the personnel and that you also take care of my interest there. I have 15 shares and you have 3, that is if you get the dong by then. Really I am damn sorry this thing came up as I am in the army and can't get out at random and I am just tied down here. I wouldn't buy the place if you did not have the job of managing the place. Okeh now you tell my brother that you are representing me and if he doesn't like it he can return the \$15,000 and I will pull out and if not I will try and buy him out. So hold the contract and let Hiram Fong know that I want my share in that business and not to put [25] his name in the whole shee bang. I am sorry to hear of that crap about my brothers but I didn't know that it was that

(Testimony of Fook Hing Tong.)

bad.” * * * Well, it goes on, and in the end you say: “I am going to write him now and tell him to learn the bloody business before he starts to think of something else or let me have my \$15,000 back. Better put it in black and white and tell Long John to hold”—

Q. Is that Mr. Lum? A. Yes.

Mr. Lee (Continuing): “out consummating the business. Aloha. Bear.”

Q. You wrote this letter?

A. Evidently, I did.

Mr. Lee: I will ask that these exhibits be received in evidence.

Mr. Waddoups: No objection, your Honor.

The Court: They will be received in evidence and retain the same marking.

(The documents, heretofore marked for identification, Petitioner’s Exhibit A, and A-1, were received in evidence.)

PETITIONER’S EXHIBIT A

Wailuku, Maui, 10/6/41

Hello HC

Received your letter this noon and was glad to hear from you but I am very sorry to hear that my brothers are giving you a hell of a lot of trouble on this damn business. Dont be sueprised that I expected that and was very reluctant to let things go as it is. Any way I guess since I am the heaviest stock holder and I know that you were instrumental

(Testimony of Fook Hing Tong.)

in getting the business for us I feel that it would be okeh as long as you were able to take the business and manage it. I know that I wouldnt put 15000 dollars for nothing knowing that it is a gold mine but hell if you ditch the place there wont be any of that money that I will ever smell. I know those brothers of mine and that is one reason why I didn't back them up the last time when they wanted the Motorcoach cafe. Now the trouble id up again.

Here is the proposition, as was stated verbally that you handled the personell and that you also take care of my interest there. I have 15 shares and you have three, that is if you get the dong by then, Really I am damn sorry this thing came up as I am in the army and cant get out at random and I am just tied down here. I wouldnt buy the place if you did not have the job of managing the place. Okeh now you tell my brother that you are representing me and if he doesnt like it he can return the 15000 and I will pull out and if not I will try and buy him out. So hold the contract and let Hiram Fong know that I want my share in that business and not to put his name in the whole shee bang, I am sorry to hear from of that crap about my brothers but I didnt know that it was that bad.

So much HC as I am very busy and am going to write to those fellows a letter and tell them that I intended for you to handle the business as I have all the confidence ib you and that I would not have put the money out if I was to learned that you were

(Testimony of Fook Hing Tong.)

not there to handle it. I know for a fact that they do not thoroly know the hoomalimali game, the banana oil stuff. So much. Tell Dee Hing to take his face out of the place or throw him out as he has nothing in there. As for Kui Hing he is a weak sister and I am disappointed in that guy. So you see you are he big cheese there. Please check the cash too with them and keep tract of the whole affair. I hereby appoint you to take charge of my interests there.

I am going to write him now and tell him to learn the bloody business before he starts to think of something else, or let me have my 15000 thousand back. Better put it in Black and white and tell Long John to hold out consumating the business. Ahola Bear.

(In pencil): Copy of letter that I wrote Chong—They got excited when they see plenty of people & dough. Small town guys Ching—so be tolerant & patient. Do it for my sake.

/s/ B

[Envelope]

Postmark: Wailuku, Hawaii, Oct. 6, 3 p.m., 1941.

Addressed to: Mr. H. C. Ching
Nuuanu Y.M.C.A.
Honolulu, T.H.

Filed June 21, 1948, Circuit Court, T. H.

Filed Oct. 12, 1948, Supreme Court, T. H.

(Testimony of Fook Hing Tong.)

PETITIONER'S EXHIBIT A-1

Wailuku Maui, 10/6/41

Dear Brother:-

I have received word that you are not holding your end of the bargain as agreed upon by the whole family. We talked it over and now I find out that you are trying to run everything your way. Please understand that I have HC ching there to look out after my interests and and that your position was to take care of the finances and the monetary end. You and he are the sole administrators there and that you take care of the above and that Ching handles the personell. I am acquainted with HC Ching and to be frank I would not put up the money if it had not being for the fact that Ching was instrumental in getting the business for us and further let us be frank that if Ching is not there, I would like you to buy me out. I did not finance you the last time on the Motor Coach cafe, knowing that you have plenty to learn about business, and I repeat that if HC Ching was not helping to handle this business I would not go in. So that is my intention that you abide by what was consummated at the verbal conversation held at home. If you think you can handle the place by yourself you can have my intere shares but I cannot afford to spare that much cash for you to promote any business. I hope this makes it plain to you what my sentiments are. Sometimes too much money and being too busy yets into a fellow's head and he gets all excited. Tell

(Testimony of Fook Hing Tong.)

Dick to stay away from there and not meddle around too much with the waitresses or the personnel. Also he has no onterest there. If things keep up as it is, we will be on the rocks. I want to be frank and I dont want to hurt anyone's feelings, but let me tell you that I know you have no experience in that kind of business which is a hoomalimali game, a hand-shaking game, where the customer is always right and where you have a put on a smile whether you like it or not. Our fmily dont know that, they are too damn sensitive and try to play big shot. I am leaving it up to you to carry out orders as was stated in our discussion. For Gods Sake you have more han you can handle now, and dont go into any more promotions without thinking things over or letting me know. I have enough money at stake and I dont care to have you gamble the thing away on wild cat schemes and ideas. At least you dont give a damn to tell me or write me a letter about the whole business, and all you think is yourself. I am almost sorry that I got into this affair. So get down to business and work together. Study your business well, while you have the chance to be taught. The idea is to make the money regardless whether you are the janitor or what they they call you. That is business ans this is not the little Jerk water town of Kohala where you know eevry tom Dick and Harry. Get wise to yourself and the less member of the family hand around the better for the business. I dont think anyone should be around

(Testimony of Fook Hing Tong.)

around there eexcept you and Ching. Too many bosses spoil the soup. Adn dont get too suspicious of the other guy. Please dont make me regret that I had a hand in this affair and I am getting worried. Take your time and be cool, dont get excited when you see so many people and have ching around to help you if he has to put out more time, he will do it gladly, but in this game the main attitude towards the success is playing ball with the other fellow. I am sending a copy of this letter to Ching so that he will know that he is there to look after my interest. I cant get out and come down but I am worried that you people will screw up the works. So much.

YOUR BROTHER.

Filed June 21, 1948, Circuit Court, T. H.

Filed Oct. 12, 1948, Supreme Court, T. H.

Q. Now, Doctor Tong, why did you write that you had put in \$15,000 when you had actually put in \$10,000?

A. Because I forgot I had—I didn't have that much.

Mr. Lee: If your Honor please, I just noticed one of the witnesses has been here ten or fifteen minutes. I will ask that he be excused.

The Court: All witnesses but the parties to the action will remain out of the hearing of the court. [26]

(Testimony of Fook Hing Tong.)

Q. Were you supposed to put up \$15,000 on it?

A. I was supposed to put up that if I had \$3,000 from Mr. Ching.

Q. You were supposed to put it up for Mr. Ching, put his \$3,000 up?

A. Yes. He was taking my shares from me. I was supposed to give him from my share. The others had taken up——

Q. The others had taken up the other \$10,000?

A. I was supposed to take my ten.

Q. I don't understand you, Doctor. You were supposed to put up \$15,000. A. Yes.

Q. As part of your contribution to this capital?

A. Yes.

Q. Is that correct? A. Yes.

Q. Now, who was supposed to put us the other \$10,000?

A. I wasn't supposed to put up \$15,000. I couldn't take \$15,000. I took \$10,000. That's all I pay. Out of that ten, if Mr. Ching wanted to come in, he would take three of that.

Q. You take twelve, instead of fifteen?

A. Seven.

Q. Oh, seven. Who was supposed to put up the other \$15,000? A. The other brothers.

Q. Didn't you tell the court that \$10,000 that you deposited with Kui Hing was supposed to be the down payment for the business?

A. That was the first money that there was there. [27]

(Testimony of Fook Hing Tong.)

Q. That was the only money that was there?

A. I don't know.

Q. Really, don't you know, Doctor, that you were the capitalist of the family, so far as that is concerned, you had the money?

A. I had cash, but I am not a capitalist.

Q. Well, all right. I will take that term back, Doctor, but wasn't your \$10,000 used as a down payment for the purchase price?

A. I don't know. I just gave it to my brother to handle it.

Q. Didn't you know that your brothers didn't put up a nickel at the time, just as much as Hung Chin Chong didn't put up a nickel at the time?

A. I don't know.

Q. Isn't it a fact that even after the deal was consummated, October 10, approximately, 1941—you say about October 15—that the rest of the purchase price was agreed to be paid at \$1,000 a month out of the profits of the business?

A. The purchase price? No. That was—I think it was the inventory.

Q. Let me ask you this question: Do you know whether or not when the deal was consummated, whether or not Mr. Lum was paid more than \$10,000 as a down payment for the business, with the balance to be paid at \$1,000 a month?

A. All I know is that the purchase price was \$25,000, that had to be paid accordingly, and the inventory was to be paid at a \$1,000 a month.

Q. The inventory was paid at \$1,000——[28]

(Testimony of Fook Hing Tong.)

A. The purchase price was \$25,000.

Q. Let me ask you this question: This sale was consummated, so I got it, \$25,000 was paid to Mr. Lum?

A. That's right.

Q. Are you sure about that?

A. Positive, or else he would not turn the business over.

Q. How much was the inventory?

A. I don't know. All I know is that it was \$4,000 or \$5,000, because I had assumed \$5,000 of that, when the blitz came.

Q. You assumed the inventory, paying for the inventory?

A. The blitz came and I couldn't keep up the \$1,000 a month. Mr. Fong wrote me a letter, and I told him I was assuming that \$5,000. That's all I know.

Q. You know the inventory was more than \$5,000?

A. More than \$5,000?

Q. About \$15,000, wasn't it?

A. I don't know.

Q. Well, you people were operating the business during the months of October, November and December, that was before the blitz?

A. Yes.

Q. Weren't you people paying Mr. Lum from the profits of the business on this purchase price?

A. I guess so.

Q. Wasn't this business virtually a gold mine, as you stated in your letter?

A. Well, I gathered that from the expressions, what I wrote, of what people say, a "gold mine."

(Testimony of Fook Hing Tong.)

So I think maybe it is a [29] gold mine. I don't know. I wasn't in that business myself, ever. I only surmise from hearsay.

Q. Well, in fact, as it turned out, it was a gold mine? A. Well, not during the blitz time.

Q. I am talking about the thing up there during the war? It was a money mill, wasn't it, actually there?

A. I don't think so, compared with others. Everything was the same.

Q. Can you tell me or do you recall what your business was during the years 1942 to 1945?

A. I don't have the exact figures.

Q. Approximately?

A. My share of it was—the only time I remember getting the figures coming to me was in the first three months, was \$2,000.

Q. As your share? A. That is my share.

Q. Do you know what your brothers got?

A. I couldn't remember the figures now.

Q. Who keeps your books?

A. We have a bookkeeper.

Q. What is his name? A. Wallace Aoki.

Q. Where is his office?

A. I think part time he works at the Hawaiian Meat Company.

Q. Do you people keep records of your books at one of your brother's office, or at the Green Mill? Or is it Mr. Aoki? A. Mr. Aoki.

Q. You people don't have records of your [30] own?

(Testimony of Fook Hing Tong.)

A. All the records—no. I don't have any.

Q. Do you know at the time whether or not—
at the time of closing this deal, as you stated October 15, 1941, whether or not either one of your brothers had put in any cash of their own?

A. I know that they were waiting for the cash to come down, to be transferred.

Q. What cash?

A. A check from the Bank of Hawaii, from Hawaii, Kohala.

Q. Both brothers?

A. Well, the other brother there—I think he has his own money. I don't know.

Q. Let's stop——

A. Chong Hing was waiting for a check. I don't know whether he was making a loan from the Bank of Hawaii, Kohala branch, or he had assets. I don't know where he got it.

Q. How much was the loan that he was going to make? A. \$10,000.

Q. Did he have any assets upon which he could give the bank security for that loan?

A. He had stocks, something like that. I don't know.

Q. You don't know?

A. No. Well, he told me that he had stocks amounting to that.

Q. What about Kui, where was he going to get his money?

A. That's up to him. I don't know. He started practising in 1928. If he can't have \$5,000 to his

(Testimony of Fook Hing Tong.)

credit, or couldn't make a loan of \$5,000, why—— [31]

Q. But as of October 15, 1941, they didn't put up a nickel in cash, did they, except from what they were supposed to put in as capital?

A. I think it was around the 11th, wasn't it, it was consummated,—the business was closed, or something like that.

Q. Actually the business was closed as of October 10th. A. Closed October 10th.

Q. At the time they didn't put up the cash,—any money? A. How can they,——

Q. I am not asking you that. I am asking you whether or not you knew whether or not they put in a nickel in the business?

A. Sure they put it in.

Q. Did you put in another other amount of capital contribution in to the business?

A. Yes, the rest of the \$25,000.

Q. Well, there was,—you put in \$10,000?

A. Yes.

Q. Who put,—how was the fifteen put up?

A. By the two of them.

Q. Who put up ten, and who put up five?

A. Chong Hing put up \$10,000; the other \$5,000.

Q. Isn't it a matter of fact, that Chong Hing was handling the finances of the Green Mill prior to the closing of this deal, October 11, 1941, as you say? A. I don't know.

Q. You don't know that?

A. I was in Maui, I don't know.

(Testimony of Fook Hing Tong.)

Q. Who was supposed to handle the money that was coming in [32] from the Green Mill? Who took charge of the money?

A. Well, the seller was there, too. We were the buyers. I think it was completely transferred.

Q. As a matter of fact, the seller wasn't there, the seller was in bed, wasn't he? He was a sick man?

A. Well, I don't know. He came down there.

Q. Isn't it a fact that his bookkeeper came, Dai Ching, and he was looking after the seller's interest, and he took the inventory with Chong Hing and Mr. Ching?

A. You are asking me something,—I wasn't there.

Q. If you don't know, say you don't know.

A. I don't know.

Q. What I want to know from you is when you left the \$10,000 in Kui Hing's hands, there must have been some arrangement as to who was going to handle the cash that was rolling in on the sales record at the Green Mill. Certainly it wasn't Mr. Ching, was it? A. I don't think so.

Q. Who was supposed to handle the cash?

A. That's what I say, either my brother or the seller, on the consummation of the business.

Q. Doctor, you don't know, as a matter of fact, as I gather, whether or not your two other brothers got \$15,000 out of the Green Mill to put in as their capital?

A. I know for a fact that they had the money.

(Testimony of Fook Hing Tong.)

Q. Do you know whether or not, as a matter of fact, that the loan of Chong Hing with the bank came through?

A. I think there was a certified check to that account.

Q. Do you recall what the date was that Chong Hing got [33] that certified check?

A. No. I don't. Some time in the month of October.

Q. Was it prior to October 10th or October 11th, or subsequent thereto? A. Prior.

Q. Isn't it a matter of fact for the years 1942, 1943, 1944, 1945 and 1946, that the average gross annual income of the business was approximately \$150,000?

Mr. Waddoups: I object to that, your Honor, at this point in the proceedings, as incompetent, irrelevant and immaterial; until there has been established an interest in this business on the part of the petitioner, it is not material what the income was. As a matter of proof now, he had absolutely no interest in it, an accounting does not follow until it is shown that he does.

Mr. Lee: If your Honor please, I would like to state that the whole basis of the suit is based on the fact in the arranging of the purchase of the business, that by the action of the respondents themselves were the recipients of so much money coming into this mill, this money mill, that they took this action in breach of their oral agreement.

The Court: Objection sustained insofar as it

(Testimony of Fook Hing Tong.)

goes past 1942. We are interested in the situation at the time, not in 1946.

Mr. Lee: Very well, your Honor.

Q. Do you recall, Doctor, just for the months of October and November, two months, that there was a gross income of \$20,000 for 1941, if you know?

A. I don't know, except the dividend check. [34]

The Court: Is that the dividend check the first two months was \$2,000?

A. Yes.

Mr. Lee: I have no further questions, for the time being.

Mr. Waddoups: I have no questions at this time, your Honor.

The Court: Very well. Call your next witness.

Mr. Waddoups: May I ask one question?

Cross-Examination

By Mr. Waddoups:

Q. Doctor Tong, Mr. Ching came over to Maui to see you, did he not? A. Yes.

Q. Some time about the time when you were about ready to close this partnership deal?

A. Yes, sometime around there. I remember the fair coming up.

Q. Had he called you from Honolulu before he came up? A. Yes. He did.

Q. That call was made from Mr. Fong's office?

A. Yes. It was made from there.

Q. At the time did you advise Mr. Ching or tell

(Testimony of Fook Hing Tong.)

him anything as to whether or not he had a share of this business?

A. Yes. He asked me if he was in or out. I told him if he had the money. He had never given me any assurance of anything in the way of cash. The \$3,000 he wanted me to finance. I wouldn't finance him. [35]

Q. Did you at the time tell him that you entered into a partnership with your brothers?

A. Yes. I did.

Q. Did he know about that proposed partnership to his exclusion prior to the time that you entered into that agreement with your brothers?

A. I don't understand.

Q. Did he know that you and your brothers were going to form a partnership before you did actually form it, before you actually signed the papers?

A. Yes.

Q. I call your attention to a document dated October 14, 1941, calling particular attention to the signatures which appear on the third page thereof, and ask you to examine it and see whether,—see if you recognize that instrument?

A. I recognize my name in it, my signature.

Q. Will you glance through the instrument and see if you recall that as being the partnership agreement which you entered into with your brothers?

A. Yes. I recall this.

Q. And calling your attention to the last page, where the notarial seal shows it was executed by you on the 16th of October, 1941.

A. Yes.

(Testimony of Fook Hing Tong.)

Q. Was that before or after Mr. Ching had come to Maui that you signed this? A. After.

Q. And he had come over there, and you had told him that he had not put up the money, so he was not in, is that [36] correct? A. Yes.

Mr. Waddoups: We offer this in evidence.

Mr. Lee: No objection.

The Court: It will be received in evidence and marked Respondents' Exhibit 1.

(The document heretofore referred to was marked Respondents' Exhibit 1, and received in evidence.)

RESPONDENTS' EXHIBIT No. 1

This Agreement of Copartnership, made and entered into this 14th day of October, A.D. 1941, at Honolulu, City and County of Honolulu, Territory of Hawaii, by and between Kui Hing Tenn, Chong Hing Tenn, and Fook Hing Tong, all of Honolulu, City and County and Territory aforesaid,

Witnesseth:

That the parties hereto, having utmost confidence, faith and trust in one another, make this partnership agreement on the following terms and conditions, viz.:

1. That the partnership shall be for the carrying on of a restaurant and liquor business;
2. That the partnership shall begin on the 1st

(Testimony of Fook Hing Tong.)

day of October, 1941, and shall continue indefinitely until dissolved by operation of law or by common consent of the parties hereto;

3. That the said partnership shall be conducted and carried on under the partnership name, style and firm of "Green Mill Cafe";

4. That the place of business of said partnership shall be at 1111 Bethel Street, Honolulu, Hawaii;

5. That the capital of said partnership shall consist of the sum of Twenty-Five Thousand Dollars (\$25,000), Ten Thousand Dollars (\$10,000) of which has been paid in by Chong Hing Tenn, Five Thousand Dollars (\$5,000) by Kui Hing Tenn, and Ten Thousand Dollars (\$10,000) by Fook Hing Tong;

6. That the parties herein shall from time to time agree among themselves as to what the salary of the partner contributing his services to said business shall be;

7. That there shall be an accounting of the business at the end of every year and the profit realized shall be divided equally;

8. That losses in the partnership shall be borne in proportion to their contributive shares;

9. That whatever properties of the partnership shall not be employed in any other than the partnership business;

(Testimony of Fook Hing 'Tong.)

10. That Chong Hing Tenn shall be the "Treasurer" of said partnership and shall have the exclusive charge of all the financial details of the partnership, including the receiving and collecting of all moneys due the partnership and the paying out and disbursement of all moneys due from the partnership to others;

11. That books of account shall be kept by said Treasurer and entries made therein of all moneys, goods, effects, debts, sales, purchases, receipts, payments and all other transactions of the said partnership. Said books of account, together with all bonds, notes, bills, letters, and other rights belonging to the said partnership shall be carried on, and shall at all times be open to the examination of the other partner. Said books shall be kept in the exclusive custody of said Treasurer, and all partnership moneys received from any and all sources shall be deposited by the said Treasurer in the name of the partnership.

12. That no one of the partners, during the continuance of this partnership, shall assume any liability for anyone whatsoever, by means of indorsement or of becoming guarantor or surety, without first obtaining the consent of the other partners in writing;

13. That any provision hereinabove however expressed, may be varied or waived or abandoned by the consent of the partners in writing.

(Testimony of Fook Hing Tong.)

In Witness Whereof, the said Kui Hing Tenn, Chong Hing Tenn and Fook Hing Tong have hereunto set their hands the day and year first above written.

/s/ KUI HING TENN,

/s/ CHONG HING TENN,

/s/ FOOK HING TONG.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 14th day of October, A.D. 1941, before me personally appeared Kui Hing Tenn and Chong Hing Tenn, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[Seal] /s/ ELEANOR YOUNG LUM,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission expires June 30, 1945.

Received in evidence, June 21, 1948, Circuit Court
T. H.

Filed Oct. 12, 1948, Supreme Court T. H.

Q. Was there anyone else on this conference in Maui with Mr. Ching besides yourself?

(Testimony of Fook Hing Tong.)

A. Well, at the time I was entertaining another friend of mine.

Q. And who was that? A. A Mr.——

Q. He was there at the time that you talked to Mr. Ching?

A. He was there on two occasions.

Mr. Waddoups: I think that's all.

Redirect Examination

By Mr. Lee:

Q. You just stated something here that you talked with Mr. Ching after you had signed the articles of partnership, on Maui? A. Before.

Q. Before. Sure about that?

A. I am positive. I was there on the 12th, because it was the last day of the fair. I think the fair that year ends the 12th, or something like that. That is how I remember the date.

Q. Wasn't it October 20th that you talked with him by [37] radiophone, that he called you from Hiram Fong's office?

A. The night previous,—the day previous to the day of arrival.

Q. When was that arrival?

A. I believe it was October 12th.

Mr. Lee: October 12th. No further questions.

Mr. Waddoups: You may step down.

(Witness excused.)

The Court: Next Witness.

CHONG HING TENN

a respondent herein, called as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lee:

Q. What is your name, please?

A. Chong Hing Tenn.

Q. Are you the person named as one of the respondents in this case? A. Yes.

Q. You are one of the three brothers here?

A. Yes.

Q. Kui Hing Tenn and Fook Hing Tong,—you are Chong Hing? A. Yes.

Q. Chong Hing. You know Mr. Hung Chin Ching?

A. Yes. I don't know him real well, just met him through my brother.

Q. Your brother, Fook Hing Tong?

A. Yes. [38]

Q. When was the first time that you met Mr. Ching? A. I don't remember.

Q. Was it about that time that the doctor testified that you were in court, at your father's home?

The Court: In conference, not in court.

Mr. Lee: Pardon me, your Honor.

Q. At your father's home?

A. When I came down that day that was the first day I met him, when I came down from the country.

Q. At your father's home? A. Yes.

(Testimony of Chong Hing Tenn.)

Q. How at the time, where were you residing, in Honolulu? A. Before?

Q. Before that time?

A. Up in the country.

Q. What country? A. Hawaii.

Q. What part of Hawaii? A. Kohala.

Q. You were from Kohala, Hawaii, that is?

A. Yes.

Q. That is where all your brothers were born, isn't that right? A. Yes.

Q. Had you ever done business in Honolulu prior to that time?

A. What kind of business?

The Court: Were you ever in business here?

A. No. No business at the time.

Q. Were you ever in business in Kohala? [39]

A. Yes.

Q. What kind of business?

A. Well, I have a little store, and bar.

Q. Selling liquor? A. Yes.

Q. When did you come to Honolulu?

A. 1941, around September. I don't remember exactly.

Q. It was about that time?

A. About that time.

Q. Did you ever try to influence your brother, Fook Hing Tong in the purchase of the Motor Coach Cafe prior to that time? A. Yes.

Q. What month was that?

A. September.

Q. About the same time? A. Yes.

(Testimony of Chong Hing Tenn.)

Q. The Motor Coach Cafe was for sale, wasn't it?

A. The Motor Coach, that was before that. We are talking about the Green Mill.

Q. I am talking about the Motor Coach.

A. The Motor Coach?

Q. The one on Hotel street.

A. Not September. That was before.

Q. Well, how much before?

A. I don't know.

Q. Was it in 1941? A. 1940, I think.

Q. The latter part of 1940, or the early [40] part? A. I don't remember.

Q. Well, at any rate, it was in 1940, is that correct? A. Yes.

Q. At the time did you have any money of your own to purchase the Motor Coach Cafe?

A. My own?

Q. Pardon? A. Not very much.

Q. How much was the Motor Coach Cafe, if it was for sale? A. I don't remember.

Q. Anyway, you didn't have the money to buy it, is that correct?

Mr. Waddoups: Counsel is going to tie this up to something?

Mr. Lee: Yes.

Mr. Waddoups: I don't see the materiality of it at all, in this issue. I realize that this is an equity proceeding, and we want to give,——

The Court: He says he will tie it up. It will be received, subject to a motion.

(Testimony of Chong Hing Tenn.)

Q. Did you ask your brother Fook to put the money up for the Motor Coach Cafe?

A. He was talking about buying it. We had to raise the money to buy it. We couldn't buy it, and we dropped the matter.

Q. He told you he was not interested?

A. Yes.

Q. Now, on this Green Mill. In September, 1941, who called the conference at your father's home? [41]

A. I talked to my brother.

Q. You talked to Fook Hing? A. Yes.

Q. Did you talk during the day, or in the evening? A. In the evening.

Q. Who was present at the time?

A. Well, he and I.

Q. Just you and he?

A. Later the three brothers was,—the family is around there. I don't know whether they heard the conversation, or not.

Q. You are talking about this,—

A. We knew that the Green Mill was offered for sale.

Q. Who said that? A. I asked them.

Q. You told them that the Green Mill was for sale? A. Yes.

Q. How did you know that?

A. I heard it on the street.

Q. Do you recall who you heard it from?

A. Yes. Albert Lee.

Q. Albert Lee? A. Yes.

Q. Is that the Albert Lee on King Street?

(Testimony of Chong Hing Tenn.)

A. Yes. Sure.

Q. What did you folks talk about?

A. If that is so, we better check up if we are interested. We said,—— [42]

Q. What did your brothers say?

A. Well, find out if it is for sale, do a little more checking before we check into it.

Q. Then Mr. Ching wasn't there at the time, was he?

A. Well, he came in later on. I don't remember what time.

Q. Later on, that same evening?

A. I don't remember if it was the same evening or not.

Q. You don't remember whether it was the same evening?

A. No, sir.

Q. Or was it the following evening?

A. It may be the following evening, or before. He drops in occasionally, always. I don't know what for.

Q. You don't know what for. You don't know what he comes for over to your place?

A. He is good friend.

Q. With the doctor?

A. He goes with him, but in his business, I don't know what he come in, for that business.

Q. Well, Mr. Ching used to drop around the place whenever your brother Fook Hing comes into town; they go,—they go out together, is that right?

A. I think so.

Q. You don't know whether it is the same eve-

(Testimony of Chong Hing Tenn.)

ning, or the following evening. At any rate, that Mr. Ching came over, did he, one day in September, and had a conversation about the purchase of the Green Mill?

A. He didn't discuss with me. We discussed it, and my brother talked with him. I don't remember. [43]

Q. At this conversation at your home, where Ching was present, do you recall what the conversation was about?

A. With my brothers, about buying the Green Mill, for sale.

Q. Do you recall what the agreement was between or among you concerning how much each was to put in the partnership?

A. The purchase price was \$25,000. My brother take ten, I take ten, and I take five.

Q. Where did Mr. Ching come into the picture, if he came in at all?

A. I don't know about him. I didn't do business with him.

Q. Did your brother Fook Hing?

A. Maybe he did; not with me.

Q. Do you recall when all of you went to see Mr. Lum at his home?

A. I don't remember what day it was. I recall just one time.

Q. Was Mr. Ching present with you people, with your brothers? A. Yes. He took us up there.

Q. He took your people up there?

(Testimony of Chong Hing Tenn.)

A. Yes.

Q. At the time was the matter of price agreed upon with Mr. Lum for the sale of the business?

A. The price? We were asking if it was for sale. He had to take it up with his lawyer.

Q. There was nothing said about \$30,000 or \$25,000? A. I remember \$25,000.

Q. Mr. Lum said that he wanted \$25,000?

A. Yes.

Q. And do you remember whether or not you offered Mr. Lum [44] \$200 for an option, contract of purchase? A. I guess,—I think so, yes.

Q. Well, you did it, didn't you? You made him an offer to put \$200 down to bind the deal?

A. Yes. I think so.

Q. Mr. Lum refused, saying he was an honorable gentleman, and he knew Mr. Ching here, also an honorable gentleman, and his word was his bond?

A. I don't remember that he said it. He said it was not necessary, because he was going to see Hiram Fong.

Q. In other words, he would not take your check? A. Not necessary, he said.

Q. Then did you see Hiram Fong?

A. Lum did. Fong represented Lum.

Q. Did you have any conversation with Mr. Fong on the deal?

A. No. You mean the first day?

Q. No. The next day. A. Before that?

Q. After that?

A. After that we had something about drawing up a partnership and a bill of sale or something,

(Testimony of Chong Hing Tenn.)

transferring the license on that. He left that in the attorney's hands.

Q. Mr. Fong was representing Mr. Lum?

A. Yes.

Q. Is that correct? A. I presume so.

Q. You also had him arrange to represent you people at [45] the Liquor Commission, to have the license transferred?

A. Yes. He handled the transfer.

Q. He was representing both parties with each other's consent, is that right? A. Yes.

Q. And he drew up the articles of partnership?

A. Yes.

Q. Among the brothers? A. Yes.

Q. Now, do you remember when the application for the transfer of the liquor license was made by Lum?

A. I don't remember the date. I think some of these letters show what date it was transferred.

Q. Do you remember that the date was on October 1st, that the application was made?

A. I don't remember what date.

Q. Do you remember that it was October 10th that the Liquor Commission consented to the transfer of the liquor license?

A. It has been so long, I don't know. I think if you will look in the correspondence.

Q. I will show you here a letter, addressed to Mr. Hiram Fong, stating that the Liquor Commission was granting the liquor license October 10, 1941. You have seen this letter before?

(Testimony of Chong Hing Tenn.)

A. I never seen this letter.

Mr. Lee: I don't think there is any dispute.

Mr. Waddoups: No dispute about it, Mr. Lee.

Mr. Lee: By agreement, may we have this offered? [46]

Mr. Waddoups: No objection.

The Court: This letter is dated what?

Mr. Lee: October 11th, your Honor.

The Court: 1941.

Mr. Lee: Yes.

The Court: The Liquor Commission to Hiram Fong. This will be Petitioner's Exhibit B.

(The document heretofore referred to was marked Petitioner's Exhibit B, and received in evidence.)

PETITIONER'S EXHIBIT B

Liquor Commission of the
City and County of Honolulu
Honolulu, Hawaii

October 11, 1941.

Hiram L. Fong, Esquire
Attorney at Law
77 Merchant Street
Honolulu, Hawaii.

Dear Sir:

Replying to your communication of October 6, 1941, submitted on behalf of Mrs. Elsie Young Lum, d/b/a "Green Mill Cafe," 1111 Bethel Street requesting that she be permitted to transfer her Dis-

(Testimony of Chong Hing Tenn.)

penser General liquor license to Messrs. Chong Hing Tenn, Fook Hing Tong and Kui Hing Tong, by direction of the Liquor Commission, please be advised that at a meeting held on October 10, 1941, said request was granted.

Kindly present at this office notarized copy of Bill of Sale, certificate of co-partnership, tax clearances of the transferees, Industrial Accident Board Clearance, as also the license in order that the proper endorsement may be made thereon.

Very truly yours,

LIQUOR COMMISSION OF THE CITY AND
COUNTY OF HONOLULU,

By /s/ RAYMOND IRWIN,
Secretary.

Filed June 21, 1948, Circuit Court T. H.

Filed Oct. 12, 1948, Supreme Court T. H.

Q. I will show you a document which purports to be a bill of sale from Elsie Lum, owner of the Green Mill, to your brothers. Do you recall having seen this document before?

A. I am not sure.

Q. You aren't sure?

A. Fong kept all the records; he told me everything o.k.

Q. I notice that this bill of sale was October 20,

(Testimony of Chong Hing Tenn.)

1941, was that the date that the money was turned over, or previous to that?

A. I guess so. If you don't turn in the money, you couldn't get a sale.

Q. I am asking you whether you know?

A. I'm not sure. It must be. He is waiting for the money before he signed the document.

Mr. Lee: If your Honor please, I will ask that this bill of sale be received in evidence.

Mr. Waddoups: No objection.

The Court: Petitioner's Exhibit C.

(The document heretofore referred to was marked Petitioner's Exhibit C and received in evidence.) [47]

PETITIONER'S EXHIBIT C

Indenture made this 20th day of October, A.D. 1941, by and between Elsie Young Lum, of Honolulu, City and County of Honolulu, Territory of Hawaii, party of the first part and Vendor, and Chong Hing Tenn, Kui Hing Tenn and Fook Hing Tong, all of the same place, parties of the second part and Purchasers,

Witnesseth:

That for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration in hand paid by the Purchasers to the Vendor, the full receipt whereof is hereby acknowledged, the Vendor does hereby sell, assign, transfer and set

(Testimony of Chong Hing Tenn.)

over unto the Purchasers, their administrators and assigns, all her, the Vendor's right, title and interest, in and to the business of "Green Mill Cafe" located at 1111 Bethel Street, Honolulu, City and County and Territory aforesaid, together with all the furniture, fixture, equipment and good will of said business.

To Have and to Hold the same unto the Purchasers, their administrators and assigns forever.

And the Vendor does hereby for herself, her administrators and executors, covenant and agree to and with the said Purchasers, their administrators and assigns, that she has good title to said property; that they are free and clear from all encumbrances and that she will Warrant and Defend the above-described property hereby sold unto the Purchasers, their administrators and assigns, against all and every person whomsoever lawfully claiming title thereto.

In Witness Whereof, the Vendor hereto has hereunto set her hand the day and year first above written.

/s/ ELSIE YOUNG LUM.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 20th day of October, A.D. 1941, before me personally appeared Elsie Young Lum, to me known to be the persons described in and who exe-

(Testimony of Chong Hing Tenn.)

cutted the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

[Seal] /s/ ELEANOR YOUNG LUM,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission expires June 30, 1945.

Filed June 21, 1948, Circuit Court T. H.

Filed Oct. 12, 1948, Supreme Court T. H.

Q. You are sure about this? How do you know that the bill of sale that was filed with the Liquor Commission was dated October 10?

A. The bill of sale?

Q. Yes, the same thing that was dated October 10, 1941.

Mr. Waddoups: I haven't seen this before.

Mr. Lee: Neither have I. It was received in evidence, Mr. Waddoups.

Mr. Waddoups: Yes.

Mr. Lee: Will you read the last question.

(Question read by the reporter.)

Mr. Lee: Please answer the question.

A. Read it again. (Question read by the reporter).

The Court: In other words, this bill of sale we had here a minute ago is dated October 20. Mr. Herbert Lee, by his question, indicated that the same bill of sale was filed with the Liquor Commis-

(Testimony of Chong Hing Tenn.)

sion is dated October 10, now do you know anything about the other bill of sale?

A. It is also—she has to file it with the Commission to get the license transferred to us.

Q. Who handled the financial end of it? From your side? A. Naturally——

Q. You handled it?

A. I handled my own money. Nobody handle my money.

Q. Who turned over the money to the Lums?

A. My brother turned it over.

Q. Kui Hing? A. Yes.

Q. You gave him the money? [48] A. Yes.

Q. When did you give Kui Hing your money?

A. I can't remember the date. Around October, when the deal was ready for closing.

Q. How much did you give him?

A. \$10,000.

Q. So it was Kui Hing who handled the purchase? A. For the purchase.

Q. On that Green Mill?

A. Yes. We gave him——

Q. Did you have any conversation with Hiram Fong on the legal papers?

A. The legal papers, they were drawn up—I think so. Maybe he handle that thing. We spoke to him that he handle for our brothers, too, together.

Q. Did you know that there was a difference in the dates between the two bills of sales, one which was dated the 10th, which you filed with the Liquor Commission? A. I don't remember that.

(Testimony of Chong Hing Tenn.)

Q. The other one that you got, dated October 20, did you know that there was a difference in the date? A. No, I don't remember.

Q. You don't remember? A. No.

Q. Who filed the statement of the partnership with the Treasurer's office? A. Mr. Fong.

Q. Who gave Mr. Fong instructions concerning the partnership? [49] Who told him who was supposed to have so much share, and how the partnership was to be shared, you, Kui Hing, or Fook Hing?

A. I don't remember that. Maybe me or my brother.

Q. Anyway, it was one of you who told Mr. Fong what to put in the partnership agreement?

A. Yes.

Q. It was either you or Kui Hing? Fook Hing was over on Maui, isn't that true?

A. I couldn't remember if it was me first or not. Maybe me.

Q. When did you see Mr. Fong about drawing partnership papers, was it before October 1st?

A. No. After.

Q. Was it after October 1?

A. After October, before the deal was closed. October 1 the deal is not closed yet. We couldn't make papers.

Q. When did you make the deposit with Mr. Lum?

A. October. I don't remember the date. First payment, October.

(Testimony of Chong Hing Tenn.)

Q. Well, you made your first payment in October?
A. Yes.

Q. How much was the first payment?

A. \$15,000.

Q. \$15,000?
A. Yes.

Q. Of that \$15,000, \$10,000 was Fook Hing's?

A. Yes. Out of that.

Q. Who was the other?

A. Kui Hing. [50]

Q. You hadn't put anything in yet, as of that time?

A. Of that time, yes. We had until the final instruction, if the deal is O.K., then I would put up the balance.

Q. Did you receive a receipt for that \$15,000?

A. I don't remember that.

Q. Who gave the \$15,000, you, or Fook Hing, or Kui Hing?
A. Kui Hing did.

Q. But you talked with Mr. Fong about the partnership, didn't you?

A. I think so, yes, I talked.

Q. You said it was some time in October; was that about October 1, or wasn't it exactly October 1?

A. October 1? I don't remember what date. Some time around the first of October. The 1st or 2nd.

Q. I will show you a statement of copartnership which was filed in the Territorial Treasurer's office, which certifies that on October 1, 1941, the three of you entered into this partnership for the restaurant and liquor business. Do you recall having seen this

(Testimony of Chong Hing Tenn.)

statement of copartnership signed by the three brothers? A. Yes.

Q. Isn't it a matter of fact that you people entered into this partnership as of October 1?

A. Yes.

Q. You entered into the partnership as of October 1? A. The treasurer's office.

Q. Now, didn't you people have Mr. Fong draw up the partnership papers also on October 1? The same date that you people filed the statement of copartnership down in the Treasurer's [51] office?

A. I don't know about the partnership papers, what time it was drawn should be shown. I don't remember what date.

Mr. Waddoups: May I see that, please?

Q. During the month of September, weren't you people in control of the operation of the Green Mill?

A. September?

Q. Yes. Before you closed the deal?

A. No. We went to look at the place. It is under Mr. Lum's operation in September.

Q. Wasn't it a part of the deal that whatever profits came out of the business—this was after your agreement with Lum for \$25,000—wasn't it part of the agreement that you folks were going to have control of the operation for a couple of weeks, and if you people didn't like it, you would call the deal off, and if you did like it, whatever was made from the operation of the business would be applied to the purchase price?

A. No. No agreement that way. We took Octo-

(Testimony of Chong Hing Tenn.)

ber 1, pending approval of the Liquor Commission, for the transfer of the liquor license. Whether we make money or make no money, we assume the place.

Q. Who got all this money that came into the Green Mill?

Mr. Waddoups: The money that came in when?

Mr. Lee: During the period before you closed this deal?

A. Lum, under a special account, Bank of Hawaii.

Q. Who got the money? [52]

A. The special account under Elsie Lum's name. She was the owner of the place.

Q. Was that money applied?

A. Not applied to the purchase price.

Q. It never was applied to the purchase price?

A. No.

Q. Now, isn't this a fact that you had already instructed your lawyer, prior to October 1, 1941, telling him about the partnership, about that you were supposed to put in \$10,000, Fook Hing, \$10,000, and Kui Hing, \$5,000?

A. Yes.

Q. Excluding Ching?

A. No. My brother is taking care of him, not me. I didn't know anything about Ching coming in. He had a deal with Fook Hing Tong. I called his attention several times, "Where is the money?" That's all.

Q. What's that?

A. I called his attention, "Where is the money coming from?" It was supposed to come in.

(Testimony of Chong Hing Tenn.)

Q. As a matter of fact, you had already told Hiram Fong prior to October 1, 1941, to draw up partnership papers between the three brothers, isn't that right, among the three brothers? That's correct?

A. I don't know. I told him on October 1.

Q. It was about October 1, or prior?

A. Some time around October.

Q. Wasn't it October 1?

A. When the deal was through, when we need the partnership [53] papers, I told him there was three.

Q. Now, Chong Hing, you recall for a couple of weeks you and Mr. Ching were running the business at the Green Mill before the final bill of sale was executed?

A. Yes. He was around.

Q. He spent quite a bit of time there, didn't he?

A. During his spare time, he came there.

Q. How much time were you putting in?

A. I put there all my time in.

Q. What time did you put in, from when to when?

A. From the morning and night.

Q. Right through to the night?

A. Yes.

Q. You handled all the cash, didn't you?

A. You mean before the bill, before the closing?

Q. Yes.

A. Before we close the deal or after?

Q. No. Before you closed the deal.

A. When the license was transferred, yes.

Q. Yes.

(Testimony of Chong Hing Tenn.)

A. I handled the cash when we got the bill of sale, and turned control——

The Court: No. He is talking about before, while you were negotiating.

A. In the negotiation, I said all the cash turned over to the owners, still handling it. We couldn't touch it, yet.

Q. All right, at the time before, did you spent any time down at the Green Mill? [54]

A. Yes. I was coming to look at the business.

Q. Just to look at it?

A. Well, check up. October 1, we transferred.

Q. Didn't you pay the bills before the final bill of sale was drawn and signed on the Green Mill?

A. Well, I let Elsie pay cash, take out of the cash for the bills.

Q. Didn't you pay it yourself out of the same moneys from the Green Mill?

A. No. I haven't no right to touch it. She is there. The business wasn't closed. She wouldn't turn over that money to me.

Q. Did you people use to order meat during that particular period? When the meat came, you took the cash out of the cash register and paid for the meat?

A. She, the owners did.

Q. I know, but didn't you take money out of the cash register to pay?

A. Sometimes I am there when she is not there, I take and pay bills. The bill is recorded there, paid by me. Is that what you mean?

Q. Yes. A. Yes. I didn't catch on.

(Testimony of Chong Hing Tenn.)

Q. You say Elsie Lum was there?

A. Elsie has been there, the owner of the place.

Q. Besides some of these immediate bills, you paid for cigarettes, and other things, right out of the cash register?

A. I guess so. I don't know. [55]

Q. Anyway, you had control of the money side, so that you could see the amount of business that was coming in, and you paid some of the bills out of the cash register, isn't that right?

A. I guess yes.

Mr. Lee: No further questions.

Mr. Waddoups: No questions.

(Witness excused.)

KUI HING TENN

a respondent herein, called as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lee:

Q. Your name is Kui Hing Tenn?

A. Yes.

Q. You are one of the three brothers named as respondents in this case? A. Yes.

Q. Now, Kui Hing, you were present, were you not, during this conversation at your father's home where the three of you were present with Mr. Ching and your father? A. Yes.

Q. At the time was there a discussion on the

(Testimony of Kui Hing Tenn.)

purchase of the Green Mill, the possible purchase?

A. The possible purchase. Yes.

Q. Who had broached the subject of the possible purchase? A. My brother, Chong Hing.

Q. And did you hear Fook Hing Tong, in your presence, ask Mr. Ching whether or not he knew Mr. Lum, the proprietor of the Green [56] Mill?

A. Yes.

Q. Mr. Ching said that he knew him?

A. Yes.

Q. And that he would take you folks over to see Mr. Lum? A. Yes.

Q. Now, at the time, did you people know that the purchase price was approximately \$25,000?

A. At the time?

The Court: Speak out a little louder.

A. At the time it was approximately \$25,000.

Q. That was discussed right at the meeting, wasn't it?

A. I wasn't at the meeting at Mr. Lum's home.

Q. I mean at your home, wasn't that discussed?

A. No. It was not discussed, the \$25,000.

Q. You folks at that time didn't you know what the cost of that place would be? Is that correct?

A. Yes.

Q. You didn't know? A. Yes.

Q. You didn't know? A. I didn't know.

Q. You were not present at the meeting at Mr. Lum's home? A. No.

Q. Now, how did you know that your brothers

(Testimony of Kui Hing Tenn.)

would be interested in buying the Green Mill afterwards; how did you find out?

A. They discussed it with me.

Q. That was the same night or the following night? [57]

A. It could be the same night, or the following night. I don't recall.

Q. Do you recall whether or not it was the same night that Mr. Ching and your brothers went over to see Mr. Lum about the purchase or was it the following day?

A. I believe it was the same night.

Q. You believe it was the same night. Therefore, your brothers discussed with you about the purchase of the business for \$25,000 is that correct?

A. Yes.

Q. Was Mr. Ching also present there?

A. No. I don't think he was present.

Q. Now, what was said at the time when you discussed with your brother—what was the arrangement or the discussion about?

A. Well, the arrangement, we were planning to put up \$25,000. So naturally, we discussed how we were going to raise the money; how much he could put up. He said that he could put up \$10,000.

Q. Who do you mean "he" you mean Fook Hing?

A. Yes. And the other brother, Chong Hing, \$10,000, and I said I can put up \$5,000.

Q. Did you know that Mr. Ching was supposed to put up \$3,000?

(Testimony of Kui Hing Tenn.)

A. Maybe he had a conversation with my brother. I haven't discussed it for the \$3,000. It was between him and Mr. Ching.

Q. You heard that discussion?

A. He mentioned about Mr. Ching.

Q. Your brother, Fook Hing, mentioned it to you? A. Yes.

Q. Your brother Fook Hing left for Maui a day or so later, is that right? [58]

A. He left for Maui, I don't know——

Q. Very soon? A. I don't know how soon.

Q. Did he leave \$10,000 with you? A. Yes.

Q. In the form of a certified check?

A. I don't know.

Q. It was a check?

A. It was a check, I think.

Q. \$10,000 in cash, is that right? A. Yes.

Q. What did you do with the cash?

A. I put it in the bank, checking account.

Q. In your personal account? A. Yes.

Q. Did you have a conversation with Hiram Fong, the attorney, after that? A. No.

Q. You have had no conversation with Hiram Fong? A. No. I left it to my brother.

Q. You left it to your brother, Chong Hing?

A. Yes.

Q. As a matter of fact, all the legal end of the financial deal was handled by Chong Hing?

A. No. When they have the papers all fixed up, I was supposed to handle the cash.

(Testimony of Kui Hing Tenn.)

Q. That's right. I mean contacting Hiram Fong and contacting Lum.

A. They both did; the two brothers did. [59]

Q. The two brothers did. That was during the time that Fook Hing Tong was here? A. Yes.

Q. When Fook Hing left for Maui, who handled the business?

A. The other brothers, Chong Hing.

Q. Who hired Hiram Fong to draw the partnership papers?

A. The partnership papers? I don't know who hired him.

Q. As a matter of fact, wasn't it Chong Hing who hired him? A. It must be.

Q. You never heard? A. No.

Q. When did you put in that \$10,000; when did you come across with the \$10,000?

A. Well, I would have to check up with the bank to see when I put it in.

Q. Was it about October 1?

A. No. It was before.

Q. Before October 1?

A. It was September.

Q. It was September, wasn't it? A. Yes.

Q. Was it around the middle part of September?

A. Probably we had the cash. We just had the money, but never turned that money over yet.

Q. When you turned the money over, who did you turn the money over to? A. Hiram Fong.

Q. To Hiram Fong in person?

A. Yes. [60]

(Testimony of Kui Hing Tenn.)

Q. How much did you give Hiram Fong?

A. I gave him a certified check for \$15,000.

Q. \$15,000? A. Yes.

Q. Who put up the other \$5,000?

A. My brother, Fook Hing, put up \$10,000. I put up \$5,000.

Q. Where did you deliver that check?

A. Hiram Fong.

Q. You went there in person and delivered that check? A. Yes.

Q. Was Chong Hing with you?

A. Well, he left.

Q. He was there before you came and then left, is that correct?

A. Hiram Fong called me up to come down to the office.

Q. With the money? A. Yes.

Q. Did Hiram Fong tell you to bring \$15,000, the matter of \$15,000 was agreed upon?

A. Well, I think my brother had another \$10,000 that he got.

Q. That he got? A. Yes.

Q. That he had already given to Hiram Fong?

A. I don't know whether he gave it to Hiram Fong or not. I brought \$15,000 down.

Q. Did you get a receipt for that?

A. I don't remember that. I gave a check.

Q. You gave a check? A. Yes. [61]

Q. So he didn't give you a receipt?

A. I don't recall whether he gave me a receipt. I think he most probably did.

(Testimony of Kui Hing Tenn.)

Q. Did you get any papers from him when you gave him the \$15,000—Hiram Fong we are talking about? A. I don't know.

Q. Did you just give him \$15,000?

A. I signed some papers there. Maybe he had it fixed or something.

Q. You signed some papers there?

A. Yes.

Q. You don't know what you signed?

A. (Answer inaudible.)

Q. Did you receive papers from him, legal papers? A. I don't know. I don't recall.

Q. Do you know when you signed the articles of partnership? I will show you an exhibit, look at the third page; look it over. Do you remember when you signed it? A. Yes. I do.

Q. When, as of that same date?

A. Same day I signed.

Q. Sure. Or is it because you saw it in the document?

A. I signed this signature there. It must be the same date.

Q. So you gathered that from this document, is that it? A. Yes.

Q. Outside of giving this \$15,000 to Hiram Fong and the conversation about bringing this \$15,000 down, did you have anything to do yourself with the handling of the business end of this deal? [62]

A. No.

Q. Who handled it in toto, this whole thing, who was finally in charge of this deal?

(Testimony of Kui Hing Tenn.)

A. Chong Hing Tenn.

Q. As a matter of fact, you don't know whether or not Chong Hing—you don't know whether the other \$10,000 was paid on this deal to Mr. Lum at the time that you brought that \$15,000 to Mr. Fong?

A. I don't recall.

Mr. Lee: No further questions.

Mr. Waddoups: Just one question.

Cross-Examination

By Mr. Waddoups:

Q. Did you ever make any deal with Ching?

A. No.

Q. Relating to his partnership? A. No.

Mr. Waddoups: That's all.

(Witness excused.)

Mr. Lee: It is 10 minutes to 12.

The Court: Do you have any short witnesses?

Mr. Lee: We had a short witness, but we don't think we would get through.

The Court: All right. We will adjourn now.

(Adjournment.) [63]

Tuesday, June 22, 1948, 9:00 o'Clock A. M. Session

Mr. Lee: We are ready to proceed.

Mr. Waddoups: Ready for the respondent.

Mr. Lee: If your Honor please, I have a few more questions that I would like to ask of the respondent, but before I do that, may I call on two

short witnesses first so that I may dispose of them, so that they may pursue their regular duties?

The Court: Proceed.

MARK Y. MURAKAMI

called as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lee:

Q. State your full name, please?

A. Mark Y. Murakami.

Q. Do you know the petitioner, Hung Chin Ching? A. I do.

Q. You were born and raised here, were you not? A. Yes, that's right.

Q. Did you graduate from McKinley High School?

A. McKinley and the University of Hawaii.

Q. Were you a professional boxer at one time?

A. At one time, yes.

Q. Now, in 1941, did you own a tavern called the Pearl Inn? A. I did.

Q. Where is that located? [64]

A. That is at King Street; North King Street. I forget the exact number, but it near the Dillingham Boulevard.

Q. Are you still the owner of that tavern?

A. No. Not any more.

Q. Back in 1941, about August or September, 1941, did this man Ching come to see you?

(Testimony of Mark Y. Murakami.)

A. That's right. It was in the month of August, I guess.

Q. What did he see you about?

Mr. Waddoups: I object to that, your Honor, as incompetent, irrelevant and immaterial. What the Pearl Inn has to do with the Green Mill, I don't know. What Mr. Ching said to this witness is certainly not binding on the respondent.

Mr. Lee: I think it is, your Honor. It is still early yet for the objection. We propose to show that Mr. Ching wanted to buy Pearl Inn.

The Court: Mr. Ching?

Mr. Lee: Yes.

The Court: What has that to do with this?

Mr. Lee: The petitioner desired to purchase the Pearl Inn, that is, by himself. And, if your Honor please, it will bring the situation right up to the moment of the joint venture, just immediately subsequent to this action by Ching. It seems to me, your Honor, that it is very important to show in the record that Ching had the wherewithal to contribute \$3,000 into this venture. It is a circumstance, your Honor, which is by itself of not too much import, but considering the entire pattern, the entire cloth of this joint venture, it becomes an important consideration in showing the development under which the venture into the Green Mill came about. [65]

The Court: What connection did these respondents have with the purchase or the negotiations to purchase the Pearl Inn?

Mr. Lee: Well, the respondents didn't have any

(Testimony of Mark Y. Murakami.)

connection with the Pearl Inn, but the petitioner has a connection. One of the issues in the case has been raised by the answer that there is no tender made by the petitioner, that there was a lack of quid pro quo for the venture to proceed. This circumstance here, your Honor, would be material.

The Court: Supposing your petition went to this man and agreed to pay him a certain amount of money, and put up a certain amount of money in that particular Inn. What has that got to do with this situation? If the question comes up as to whether or not he had his own money to do that, he could testify to it himself.

Mr. Waddoups: That's correct, your Honor.

The Court: To have somebody else testify, it seems to me, is a self-serving declaration.

Mr. Lee: Well, if your Honor please, the element of the petitioner's desire to get into the liquor business wasn't a casual one. His mind was made up to get into the liquor business; to retire from the police department to get into the liquor business, and he went into this thing at first by negotiating for a liquor business of his own, and then the picture comes in where the Tenn brothers were, and they joined forces for a bigger deal, where more money was involved. It seems to me, your Honor, it would be very material. There would be no harm done to the respondent's case here. [66]

The Court: Here is the situation: If he wanted to go into the liquor business, he can testify to it that was his intention to go into the liquor business.

(Testimony of Mark Y. Murakami.)

Then, if there was some opposition put up as to what his intent was, they would ask him what place he intended to buy, then this would be material.

Mr. Waddoups: It might be material, or it might become a material issue at the time. But at this stage of the proceeding it has no place in it. He can testify as to his financial condition at the time of his intention. Now, I might have wanted to buy the corner of Fort and King during the war, but the fact that I wanted to and did not is certainly not evidence that I had the money to do it.

Mr. Lee: If your Honor please, I believe that there will be one of the issues of the case that would come up on this man's intent. We are, in a way, possibly, looking for testimony that would not be made an issue.

The Court: It might become relevant on rebuttal. It certainly would not be relevant with the present status of the case.

Mr. Lee: I think it is relevant by the pleadings as came out by the pleadings in the case, and I ask the court to——

The Court: But, Mr. Lee, here is the situation: You are talking about a tender or the lack of making a tender.

Mr. Lee: Good faith, I might say.

The Court: Good faith, in this particular copartnership. What he did with another copartnership or another deal, what bearing does that have on the present one? [67]

Mr. Lee: Well, I think it has a material bearing to show the petitioner's good faith.

(Testimony of Mark Y. Murakami.)

The Court: Because he was showing good faith in one deal, does that mean, ipso facto, he was showing good faith in another?

Mr. Lee: No. But it is a circumstance which I say is part of the entire pattern of the entire cloth, because we have got to go back of the written partnership.

The Court: Well, it appears on the record at this time, I will say, as to the offer of proof, that these particular Tenn brothers are not involved in this transaction, so that this court feels that it is something that is not germane to the issues here. Objection sustained.

Mr. Lee: I will ask the court to reconsider sustaining the objection, and to allow this to come in, subject to a motion to strike.

The Court: The court has ruled. Proceed.

Mr. Lee: No further questions at this time, your Honor. You are excused, thank you.

(Witness excused.)

K. C. WONG

called as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lee:

Q. What is your name, please?

A. K. C. Wong.

Q. What is your business, Mr. Wong? [68]

A. Restaurant and bar.

(Testimony of K. C. Wong.)

Q. Are you the proprietor of a restaurant and bar known as the Riverside Grill? A. Yes.

Q. Where is that located? A. Maunakea.

Q. How long have you been the owner of that business? A. 14 years.

Q. That would make it back in 1934?

A. 1934 or 1935.

The Court: That must have been at the exit of national prohibition?

Mr. Waddoups: He was one of the first under the wire.

Q. Mr. Wong, you have always been more or less interested since 1934 and 1935 in the liquor business, since you owned the Riverside Grill? A. Yes.

Q. Do you know the petitioner, Hung Chin Ching? A. Yes.

Q. Do you know one of the respondents by the name of Fook Hing or Fook Bear Tong?

A. Yes.

Q. Can you point him out in court?

A. (Indicating): The first one there.

The Court: Indicating Dr. Tong.

Q. Do you recall, Mr. Wong, some time during the month of September, 1941, a visit paid to you by Hung Chin Ching and Doctor Tong? [69]

A. Yes.

Q. Will you try to recall what they came to see you about and tell the Court?

A. Yes. They came to see me about the business. I said it is a good buy.

Mr. Waddoups: Just a minute. I am going to object to this, your Honor, until it is tied up to the

(Testimony of K. C. Wong.)

present matter in issue. There is no mention in the pleadings of the Riverside Grill, or any meeting with this gentleman. If this is a question having to do with something that is not in issue in this case, I will have to renew my objection.

The Court: Objection overruled. This is in September, about the time that these negotiations were made to buy a restaurant and liquor establishment. It is tied up with one of the parties. It will be admitted at this time subject to a motion to strike.

Q. Now, what did they come to see you about?

A. Saw me about buying the Green Mill.

Q. Who did? A. The boys.

Q. Who did the talking at that time?

A. Mr. Ching and Mr. Tong.

Q. Who asked you about the Green Mill?

A. Mr. Ching—both.

Q. What did he ask you and what did you say to him?

A. He asked me if he should go into that business.

Q. What business?

A. The Green Mill, or some bar business. [70]

Q. Did you happen to know at the time the proprietor of the Green Mill?

A. Yes. I knew him.

Q. What was his name?

A. Long John, they called him.

Q. Is that Lum Kam Hoo, the proprietor of the outfit called LeRoy's? A. Yes.

Q. Did you tell them about the fact that the Green Mill was for sale or did they ask whether or

(Testimony of K. C. Wong.)

not specifically the purchase of the Green Mill was a good thing or not?

A. I heard about when they sell.

Q. You heard about what?

A. I heard about they are going to sell.

Q. Who was going to sell? A. Long John.

Q. Where did you hear that from?

A. Oh, the boys come along to my place, and they talk about going to sell.

Q. Did you tell them that the Green Mill was for sale? A. Yes.

Mr. Waddoups: By "them" you mean who?

Q. Who did you tell that the Green Mill was for sale?

A. Mr. Ching. I think Mr. Ching or Tong, they came in and asked me if it was a good buy for that business. I said it is good. That's all.

Q. You first told Mr. Ching that the Green Mill was for sale? A. Yes.

Q. Then later on, another conversation, that was when Dr. [71] Tong came in with Ching?

A. Yes.

Q. You told them that it was a good business to go into? A. Yes.

Q. Is that correct? A. Yes.

Q. Do you know whether or not at the time when Dr. Tong was present with Mr. Ching, whether or not they had bought the Green Mill, or whether they were just contemplating buying the Green Mill?

A. Oh, he was in there at the time. We know he buy the place already, all the town talk about it.

Q. In other words, Mr. Wong, at this confer-

(Testimony of K. C. Wong.)

ence——

Mr. Waddoups: Let's clear this up. I am frank to say, your Honor, it is pretty vague to me.

The Court: You can do it on cross. You will have an opportunity.

Mr. Lee: I am trying to clear it up. So let me do it.

Mr. Waddoups: I'm sorry. I didn't mean to interrupt.

Q. Mr. Wong, you first stated that the—let's see if I get it straight—you told Mr. Ching that you had heard that the Green Mill was for sale?

A. Yes.

Q. Was that some time in the early part of September, 1941? A. About that.

Q. About that time? A. Yes. [72]

Q. Was it a few days later or the next day that Dr. Tong and Mr. Ching came there to see you?

A. Yes.

Q. At the time when Dr. Tong and Mr. Ching came to see you, did they ask you whether buying the Green Mill was a good thing or not? A. Yes.

Q. I asked you then whether or not they had bought the Green Mill when they talked with you, or were they thinking about buying the Green Mill?

A. They thinking about buying it.

Q. They hadn't bought the Green Mill yet?

A. Not yet.

Q. You are sure about that part of it?

A. Yes.

Q. That was when you had this long conversation

(Testimony of K. C. Wong.)

whether it was a good business, is that correct?

A. Yes.

Mr. Lee: Your witness.

Cross-Examination

By Mr. Waddoups:

Q. How long have you known Dr. Tong?

A. I know him since—not very long. It is about between 1941 or 1940.

Q. How long have you known Ching?

A. I know Ching since I was young.

Q. You were all friends, is that correct?

A. Yes.

Q. Did they tell you what the price was? [73]

A. What?

Q. Did they tell you what the price was of the Green Mill? A. The price? No.

Q. How could you tell it was a good buy?

A. I told him it was a good business to go in.

Q. You just told him that the bar business was a good business to go in at the time? A. Yes.

Q. But you didn't tell them that the purchase of the Green Mill was a good buy?

A. I told him a good buy, too.

Q. Did you tell him it was a good buy without knowing what the purchase price was?

A. No. I did not.

Q. You didn't know how much that they would have to pay for it? A. No.

Q. When you told them that it was a good buy, you meant by that they had a good business at the Green Mill? A. Yes.

(Testimony of K. C. Wong.)

Q. That the liquor business, generally, at the time was a pretty good business to get in, is that correct? A. Yes.

Q. You didn't mean, in saying that that you did, that the price that they were paying for it was right? A. No.

Q. You didn't mean that, because you didn't know the price, is that correct? A. Yes. [74]

Q. Doctor Tong was buying the business, was he not? I mean Doctor Tong was the one who was buying the business, isn't that correct?

A. I think they were both. I don't know.

Q. You didn't know who was putting up the money, is that right? A. Yes.

Q. You didn't know who was going to buy it, or what proportions they were going to pay for it? You didn't know that? A. No.

Q. You didn't know what amount of money that they were going to pay for it? A. No.

Q. So that all that you were prepared to tell them at the time was that the Green Mill had a good business? A. Yes.

Q. That the liquor business itself was a good business at the time? A. That's right.

Mr. Waddoups: No further questions.

Redirect Examination

By Mr. Lee:

Q. Well, now, didn't you know about Mr. Ching wanting to put some money into this Green Mill?

(Testimony of K. C. Wong.)

A. Well——

Mr. Waddoups: I object to that as leading, calling for something that is not in the evidence?

The Court: Sustained. The answer is stricken.

Q. Well, was there anything said about how much money Ching was putting in, or Ching was to put in?

Mr. Waddoups: I object to that for the same reason.

A. I don't know——

The Court: Just a minute.

Mr. Waddoups: He has already testified that he knew nothing about it.

The Court: Well, he didn't testify to that. The only thing that he said that he didn't know the price, and didn't know who was buying, or the price or by whom the price was to be paid.

Mr. Waddoups: That's correct.

The Court: There was nothing definite, as I recall.

Mr. Waddoups: Your Honor is correct, I think, on that.

The Court: Objection overruled.

Q. Do you remember the question?

Mr. Lee: Read it back.

The Court: Did either one of them say anything to you about how much he was going to invest?

A. That I forget.

Q. To refresh your recollection; at the time didn't Mr. Ching say that he was going to put in \$3,000?

(Testimony of K. C. Wong.)

Mr. Waddoups: I object to that, your Honor, as leading.

Mr. Lee: I am trying—I have exhausted the man's——

The Court: The man says that he has forgotten. I take it that you can ask a leading question, when he says that he has forgotten. If he said that he didn't know, that is a different thing, but he has exhausted his recollection. [76]

Q. (By Mr. Lee): Do you recall saying that? You said to him, "Why didn't you put in \$5,000?"

A. I asked Mr. Ching, and he said about \$3,000. "Why didn't you put in \$5,000?"

Q. Who said that?

A. I said that. He said that he hasn't got enough money. So he asked me for a loan. I said, "I can help you."

Q. Mr. Ching asked you to help him a little bit?

A. Yes.

Q. Were you ready to help him? A. Yes.

Q. Did you tell him that? A. Yes.

Mr. Lee: No further questions.

Recross-Examination

By Mr. Waddoups:

Q. Did you ever help him? Did you give Ching any money? A. No. I didn't give him.

Q. Did he ever come to you and ask you for any money? A. He came and asked me.

Q. Why didn't you give it to him at the time?

(Testimony of K. C. Wong.)

A. Well, at the time I didn't know if he got any or not.

Q. How much were you prepared to give him?

A. Oh, about a little over \$1,000.

Q. What do you mean?

A. About \$2,000 I promise him, if he mortgage his house he can get \$3,000.

Q. When was this, Mr. Wong, was this before you had the conference with Ching and Tong? [77]

A. Yes. Before that he buy the place.

Q. Did you see Ching before he and Doctor Tong came up to your place of business to discuss this question of whether this was a good buy?

A. Yes.

Q. Was it on that occasion that you told him that you could give him about \$2,000?

A. Yes.

Q. Did he ever come back after that to get the \$2,000?

A. He came back and asked me if I am ready. I said, "Any time you are ready, come and get it."

Q. When was it that he told you to get ready?

A. I don't remember the dates.

Q. Was it after you talked to Doctor Tong and Mr. Ching or before? A. How's that?

Q. Doctor Tong and Mr. Ching came up to your place of business and you had a conference?

A. Yes.

Q. If I understand your testimony correctly, before that time—before they came up to discuss the

(Testimony of K. C. Wong.)

liquor business with you, Mr. Ching had come up to you and you had promised to give him \$2,000?

A. Yes.

Q. Or about \$2,000? A. About \$2,000.

Q. If he would mortgage his house for you?

A. No. No. Not to me.

Q. Well, who was he going to mortgage it [78] to?

A. I don't know where he was going to mortgage it.

Q. Were you going to loan him the money on the basis of a mortgage or something else?

A. No. Just loaning him the money.

Q. Without security? A. Yes.

Q. Ching was a police officer at the time, was he not? A. Yes.

Q. Was he on your beat?

A. No. Sometimes.

Q. Sometimes he was on your beat?

A. Yes.

Q. When did he come back after the first time that you promised? When did he come back to ask you again for the money?

A. A few days. Every few days. Week to week; maybe weeks and weeks. I don't remember what time he came.

Q. He came in every other week for weeks and weeks, is that correct? A. Yes.

Q. Did that continue into November?

A. I don't remember.

(Testimony of K. C. Wong.)

Q. Did he ever come to see you about this \$2,000 after the blitz?

A. He came to see me, but never let me know. I said, "Any time that you want to get ready, I get ready for you."

Q. I take it from that, you are still ready to give him \$2,000 if he wants it, is that correct? [79]

A. Yes.

Q. He never did come back and say, "I am ready. I want it now," is that right? A. Yes.

Q. So that you actually never gave him five cents?

A. I never gave him. I loaned him a check when he went up to Maui, \$75 to try to see Tong.

Q. Did he borrow money from you to go up there on that? A. Yes.

Q. I see. He told you that was why he was going? Did he tell you he was broke at the time?

A. No. He didn't say broke.

Q. He just said that he needed \$75, is that correct? A. Yes.

Q. Do you know who owned the Green Mill?

A. Yes, Mr. Lum.

Q. Do you know who owns the Green Mill now?

A. Now, I don't know. Mr. Tong. It is between them. It used to be with Ching.

Q. Did you see Ching operate that place?

A. Well, I saw him there when they started.

Q. Did you talk to Ching about it later?

A. No.

Q. You haven't talked to Ching about that busi-

(Testimony of K. C. Wong.)

ness since then? A. No. I don't bother him.

Q. Have you talked to Ching about that business since October, 1941? A. No. [80]

Q. When——

A. 1941. I don't know what dates.

Q. I say: Have you talked to Mr. Ching about this business? A. Yes, I talked to him.

Q. Since October, 1941? A. Yes.

Q. When was the last time that you discussed it with him?

A. When was the last time? You mean 1941?

Q. No. The last time since 1941, any time?

A. Sometimes I just go to the house for a visit. I didn't talk to him much about it.

Q. You are familiar with the rule that police officers cannot buy an interest in the liquor business?

Mr. Lee: I object to that as incompetent, irrelevant and immaterial, whether he knows of this rule.

Mr. Waddoups: He knew he was a cop, if your Honor please.

The Court: Overruled, on the ground that it may go to the credibility of the witness.

Q. Are you familiar with that rule?

A. Yes.

Q. In the Police Department?

A. He tried to quit the job.

Q. He tried to quit the Police Department?

A. Yes.

Q. How do you know that?

(Testimony of K. C. Wong.)

A. He told me. I told him, "You have to quit the job; put more time in to work." [81]

Q. Wouldn't they let him quit?

A. He didn't say.

Q. He didn't quit, did he? He is still a police officer, isn't he? A. Yes.

Q. So, so far as you are concerned, you know that he has not to date acquired any interest in the liquor business, is that your understanding?

A. As I understand.

Q. You said a while back that you saw him running this place here? A. Which place?

Q. The Green Mill.

A. He said that he had to see there.

Q. You saw him up there?

A. There has been times we go in there. We go in there, drop in for a drink.

Q. Just went in there to have a drink?

A. Yes.

Q. So that when you left the impression he was running it you don't want the court to get that, do you, is that correct? A. No.

Q. Is that right?

A. What's that? I don't understand what that is.

Q. Let me put it this way. Maybe I am wrong. You have given me the impression from your testimony that you earlier stated that you saw Mr. Ching running the Green Mill when they first opened, is that correct? [82] A. Yes.

Q. Was he a police officer at the time?

(Testimony of K. C. Wong.)

A. No. He was a police officer, but he is off then.

Q. But he was none the less on the force, was he not? A. Yes.

Q. The fact is, Mr. Wong, you don't know who acquired this business, isn't that right?

A. No. I don't.

Q. Any idea that you have had about what Mr. Ching's interest in the business was coming from Mr. Ching, is that correct? A. Yes.

Q. He is the one who told you anything pertaining to his connection with the Green Mill? Is that right? A. Yes.

Mr. Waddoups: That's all.

Redirect Examination

By Mr. Lee:

Q. Mr. Wong, let's get this clear——

Mr. Waddoups: If your Honor please, just a minute. At this time, if your Honor please, I move to strike all the testimony given by this witness as to Mr. Ching's interest in the Green Mill, on the ground that it was—the source of it was purely self-serving, a self-serving declaration. It is on his own statement just made.

Mr. Lee: If your Honor please, the testimony is shown to have been borne out, and was raised by counsel for the respondents themselves, and that whenever it was developed on cross-examination, it occurred at the time [83] of the conference with both, prior to and during the——

(Testimony of K. C. Wong.)

The Court: The motion to strike will be denied. There is no jury here. We consider the source.

Mr. Waddoups: All right.

Q. (By Mr. Lee): Now, Mr. Wong, as I understand it, you wanted Ching to put up, or go into the business, and put in \$5,000? A. Yes.

Q. And he told you that he didn't have enough money and could only put in \$3,000, is that correct?

A. Yes.

Q. And that you were willing to lend him \$2,000?

A. Yes.

Q. You also stated that Ching was going to mortgage his property. Was that to raise the other \$3,000?

A. No. I don't know. Mortgage about \$1,000, I think.

Q. Mortgage \$1,000, and then he gets \$3,000, is that right? A. Yes.

Q. You went over to the Green Mill when they opened? A. Yes.

Q. Now, when you went over there, was it opening day or what? A. Opening day.

Q. Opening day. Who was present, running the place? A. I don't know who was running it.

Q. I mean was Mr. Ching there?

A. He was there, shaking hands with the [84] people.

Q. Did you shake hands with him?

A. Yes.

Q. You said that he offered you a drink?

(Testimony of K. C. Wong.)

A. Yes.

Q. At the place? A. Yes.

Q. Did you have a drink?

A. I had a drink.

Q. Did you have to pay for that drink?

A. I bought a drink, too. But I bought my drink first, and when I drink it—just to give him some business.

Q. It was an honorary custom among you bartenders, you tavern keepers that you didn't want to pay for the first—I mean you didn't want to get a free drink the first time? A. Yes.

Q. You want to pay for that? A. Yes.

Q. Were there other people there, Doctor Tong, Chong Hing Tenn?

A. I don't remember very much. It is kind of cloudy.

Q. Were there a lot of flowers sent there?

A. Oh, yes, flowers.

Q. Did you send any flowers?

A. No. I didn't send any flowers. I was busy myself.

Q. Did you notice who was shaking hands with whom?

A. I was shaking hands with Ching.

Q. Were there any other people shaking hands with Ching?

A. I forget the other ones. [85]

Q. What was Ching doing?

A. He was running around, like cashier, some-

(Testimony of K. C. Wong.)

times. Not stay too long. A little while he stay there.

Q. How long did you stay there?

A. About ten or fifteen minutes.

Q. During that ten or fifteen minutes did you see Ching? Was he very busy? A. Yes.

Q. He was shaking hands with all the people and at the cash register? A. Yes.

Q. Did he tell the waitresses, and so on, what to do? A. Yes.

Mr. Lee: No further questions.

Recross-Examination

By Mr. Waddoups:

Q. As a matter of fact, one time you told Doctor Tong in your opinion Ching was not reliable, isn't that right?

Mr. Lee: I object to that as incompetent, irrelevant and immaterial. What is the difference, whether or not he told Doctor Tong Ching was reliable or not?

The Court: Objection sustained. Not on anything that was brought out on redirect examination.

Mr. Waddoups: Very well, your Honor. That's all.

(Witness excused.) [86]

HENRY N. THOMPSON

called as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lee:

Q. State your name, please.

A. Henry N. Thompson. Secretary of the Liquor Commission, City and County of Honolulu.

Q. How long have you been with the liquor commission? A. About 13 years.

Q. How long have you been secretary?

A. The last two years.

Q. Back in 1941, were you employed by the liquor commission? A. I was.

Q. In what capacity?

A. Assistant chief inspector.

Q. You have with you the records of the Green Mill? A. That's right.

Q. What is the Green Mill?

A. The Green Mill cafe, on Bethel street, dispenser general premises.

Q. It is on Bethel street, is that right?

A. Yes.

Q. Is that just above the Hotel Bethel?

A. Just above, it is 1111.

Q. Do you have with you there the official records containing an application for the transfer of the liquor license by one Elsie Lum to Fook Hing Tong, Kui Hing Tenn and Chong Hing Tenn? [87]

A. Yes.

(Testimony of Henry N. Thompson.)

Q. What was the first thing that came to the attention of the liquor commission considering the premises in relation to the transfer of this liquor license to these people from Mr. Lum?

A. The request by Mrs. Lum to transfer the license to Mr. Chong Hing Tenn. There is a letter in here dated the 6th of October, 1941.

Q. Let me see this. This was on the stationery of Hiram L. Fong, attorney at law, isn't that right?

A. Yes.

Q. Dated October 6, 1941. It states——

Mr. Waddoups: Were you going to introduce it?

Mr. Lee: Yes. I am going to have it identified and have copies of this. I notice here in this letter it says to transfer dispenser general liquor license to Chong Hing Tenn, as we are about to consummate the sale of my business, the Green Mill Cafe, located at 1111 Bethel street. Attached hereto is a copy of the bill of sale, which I intend to give to Mr. Chong Hing Tenn upon receiving authorization from your commission.

Do you have a copy of that bill of sale that was used? This was a copy of the bill of sale that accompanied the letter? A. Yes.

Q. Now, you notice that the bill of sale was dated October 10, 1941?

A. No. This bill of sale was given to us after the sale [88] was approved by the commission. Then we requested a bill of sale for our office files.

Q. In other words, in this letter there was no bill of sale attached?

(Testimony of Henry N. Thompson.)

A. He may have sent them an unsigned bill of sale, I don't know, but the one that we kept the record of is after the sale was completed.

Q. Wouldn't you make a notation if there was no bill of sale?

A. You mean the secretary at the time. I didn't receive this correspondence.

Q. I note here that only Mr. Chong Hing Tenn's name was typewritten. A. Yes.

Q. In handwriting there were two other names then put in, Doctor Fook Hing Tong, and Kui Hing Tenn. Who were they written by?

A. It is Ray Irwin, who was secretary at the time.

Q. In other words, it was written by an employee of the liquor commission? A. Yes.

Q. Not by Mrs. Lum herself?

A. No. Well, the report from the chief inspector and myself, I think, mentions——

Q. You made the report on this?

A. I made the report on this.

Q. Dated October 9? A. Yes.

Q. 1941? A. Yes. [89]

It is mentioned here that they advanced the money, \$25,000 purchase price.

Q. When was the investigation made? There was a report made, dated October 9?

A. It was a few days before.

Q. It would be a few days before that?

A. Yes.

(Testimony of Henry N. Thompson.)

Q. Who made this investigation, Malani and yourself? A. Yes.

Q. Generally, how much ahead of time do you take and investigate these?

A. Sometimes it takes us a week.

Q. So the investigation might have begun on October 1?

A. No. It could have been right after it was received.

Q. Well, after this letter was received?

A. Yes.

Q. I also note that there is a statement of copartnership filed at your office, is that generally required by the commission? A. Yes.

Q. And this statement of copartnership has the name of Kui Hing Tenn and Chong Hing Tenn and Fook Hing Tong? A. Yes.

Q. And it certifies that the partnership began October 1, 1941? A. Yes.

Q. Do you have any other records of the Green Mill at this time? A. No. [90]

Q. Is there anything else?

A. No. The whole thing is the Green Mill folder.

The Court: When, according to the record there, was the transfer consummated?

Mr. Lee: When was it consummated? October 10.

Mr. Waddoups: I think there is already a document in evidence covering that, that was the original letter.

(Testimony of Henry N. Thompson.)

Mr. Lee: That's true, Mr. Waddoups. It is a letter.

Mr. Waddoups: Being Petitioner's Exhibit B.

The Court: Well, that is dated what?

Mr. Waddoups: The date of the letter is October 11, setting forth what occurred on October 10, 1941, said request was granted.

The Court: All right.

Mr. Lee: With your Honor's permission, may the following documents be identified at this time?

The Court: What he might do is leave this in the file. Don't mess up his file. Then you can make copies of them and Mr. Waddoups can have the right to check.

Mr. Lee: I have had copies made.

The Court: Let Mr. Waddoups take a look at the copies. Take five minutes and check them.

Mr. Waddoups: We will do it during the recess, your Honor.

The Court: Take a recess.

(Recess.)

Q. Mr. Thompson, this is a copy of the statement of copartnership that was filed with the treasurer?

Mr. Waddoups: We have no objection to that copy going [91] in evidence without further identification.

The Court: All right.

Mr. Lee: It will be marked and received in evidence.

(Testimony of Henry N. Thompson.)

The Court: That is the statement of copartnership filed with the liquor commission?

Mr. Waddoups: Yes.

The Court: Let's see, the last exhibit is what? This would be Exhibit D, in evidence.

(The document heretofore referred to was marked Petitioner's Exhibit D, and received in evidence.)

PETITIONER'S EXHIBIT D

Received by Liquor Com. on October 20, 1941.

Filed at Treasurer's Office on October 20, 1941.

Statement of Co-Partnership

Of Green Mill Cafe, County of Honolulu, T. H.,
October 13, 1941 to the Treasurer of the Territory of Hawaii, Honolulu, T. H.

Sir:

This Is To Certify that on the 1st day of October, 1941 the undersigned entered into and formed a general partnership and herewith submit for filing in your office in compliance with law, the following statement:

1. The names and residences of each of the members of said copartnership are:

Fook Hing Tong, address, National Guard
Camp, Wailuku, Maui.

Chong Hing Tenn, address, 1927 Coyne St.,
County of Honolulu

(Testimony of Henry N. Thompson.)

Fook Hing Tong, adress, National Guard Camp,
Wailuku, Maui.

2. The nature of the business of said co-partnership is to maintain and carry on a restaurant and liquor business.

3. The firm name of said co-partnership is Green Mill Cafe.

4. The place of business of said co-partnership is at 1111 Bethel Street in the District of Honolulu and County of Territory of Hawaii.

Witness our hands, this 13th day of October, A.D. 1941.

/s/ CHONG HING TENN,

/s/ KUI HING TENN,

/s/ FOOK HING TONG.

Territory of Hawaii,

City and County of Honolulu—ss.

On this 14th day of October, 1941, before me personally appeared Kui Hing Tenn and Chong Hing Tenn, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

/s/ ELEANOR YOUNG LUM.

Notary Public, First Judicial Circuit, Territory of Hawaii.

My Commission expires June 30, 1945.

(Testimony of Henry N. Thompson.)

Acknowledged by Fook Hing Tong, at Maui, on October 16, 1941.

Notorized by Shizuichi Mizuha, Second Judicial Circuit.

Filed June 22, 1948, Circuit Court, T. H.

Filed Oct. 12, 1948, Supreme Court, T. H.

Q. Now, Mr. Thompson, at the time when the liquor commission was considering this transfer of this license, did you and Mr. Milani, the chief inspector, at the time interview Chong Hing Tenn?

A. That's right.

Q. One of the partners? A. Yes.

Q. Did you make a report of the conversation had with Mr. Tenn?

A. The report was made by Chief Milani.

Q. Concurred in by you, is that right?

A. Yes.

Q. So that you were persent when this interview with Chong Hing Tenn occurred?

A. No, sir.

Q. Now, as a part of this entire report there is —Mr. Milani and your particular inspector's report. I will ask you to look at this same report. That is taken from your report, excluding the top part, which consists of or contains [92] the personal history of Chong Hing Tenn.

A. It is part of our report.

(Testimony of Henry N. Thompson.)

Q. That is part of your report? A. Yes.

Mr. Lee: Is there any objection?

Mr. Waddoups: May I ask a question or two about it?

Mr. Lee: Certainly. Go ahead.

Cross-Examination

By Mr. Waddoups:

Q. At the time of your report, copies of which I have here, which was dated October 10, 1941, you were addressing yourself to the proposition of Mr. Chong Hing Tenn taking the license individually, were you not, and not of the copartnership?

A. That I don't remember, how the copartnership came in, but I think it was done by our secretary. I can't remember back.

Q. But your reports relate only to Chong Hing Tenn? A. That is right.

Q. That's correct. But so far as the present licensee is concerned, or the prospective licensee is concerned, on whom you sent in a report, that was addressed solely to Chong Hing Tenn?

A. Yes.

Q. That did not at the time contemplate a copartnership, is that correct? A. No, sir.

Mr. Waddoups: We will object to it, if your Honor please, on the ground that it is incompetent, irrelevant and immaterial, not binding on the other two respondents. It is addressed solely to the individual. We realize that it is [93] a court of

(Testimony of Henry N. Thompson.)

equity, and the court can sift the equity properly, but we do not want the record to appear that we are waiving any rights we have in that connection.

The Court: I can't very well rule on it unless I know what it is all about. The report will be received in evidence, over counsel's objection, and marked Exhibit E. It is understood that this is a copy from the reports of the liquor commission. I understand that there is no objection on the ground that it is just a copy from their records.

Mr. Waddoups: No. There is no objection on that ground.

The Court: Very well.

(The document heretofore referred to was marked Petitioner's Exhibit E, and received in evidence.)

PETITIONER'S EXHIBIT E

Rec'd by Liquor Commission on October 10, 1941.

Inspector's Report

By a mutual verbal understanding with a very intimate friend, Mr. Chong Hing Tenn was in partnership with one named James Omura, doing business as the Hai Liquor House, exercising a retail beer and wine, and a dispenser beer and wine licenses, from 1937 to 1939, when the business was sold to John Rochas, in May 1939, for \$650.00 This business was a separate unit from that of the Tong Fat Tenn Store. Since leaving the plantation in

(Testimony of Henry N. Thompson.)

1940 he has been in his father's store, which he has operated as his own.

Purchase price is \$25,000.00 cash. The applicant has \$10,000.00 of his own. His brother, Doctor Fook Hing Tong is advancing \$10,000.00 and another brother, Doctor Kui Hing Tong, \$5,000.00, and are his backers, starting him in business. This is a family business affair, and eventually may combine all brothers later.

There is about 4 years left to the present lease which expires in 1945. Rental now is \$350.00, of which the Metronome Music Store pays \$130.00, being that they have acquired a portion of the original premises.

This is a bona fide restaurant, that is well patronized during meal hours, and we believe that Mr. Chong Hing Temm, will be a satisfactory licensee. He is an experienced business man, and is to be assisted by Mr. Ching, at present a Sergeant in the Police Department, who will retire therefrom. Although the present licensee and her husband have been conducting this place in a satisfactory manner, we believe the transfer will be an improvement. We recommend that the request to transfer be granted.

Respectfully submitted,

CLAUDE K. MALANI,

Chief Inspector.

/s/ HENRY N. THOMPSON,

Assistant Chief Inspector.

Filed June 22, 1948, Circuit Court, T. H.

Filed Oct. 12, 1948, Supreme Court, T. H.

(Testimony of Henry N. Thompson.)

Q. (By Mr. Lee): Calling your attention to the last paragraph of this report to the commissioners, you state, "This is a bona fide restaurant that is well patronized during meal hours. We believe that Mr. Chong Hing Tenn will be a satisfactory licensee. He is an experienced business man and is to be assisted by Mr. Ching, at present a sergeant in the Police Department who will retire therefrom." Where did you get this report that Mr. Ching—let me ask you this, I withdraw that question—who was it referred to by Mr. Ching?

A. We get that from Mr. Chong Hing Tenn himself.

Q. What Mr. Ching?

A. Sergeant Ching here.

Q. Is that Sergeant Hung Chin Ching sitting in the chair here? [94]

Q. Mr. Chong Hing Tenn reported to you commissioners, or to you, rather, and Mr. Milani, that Mr. Ching was at present a sergeant in the Police Department but had retired? A. Yes.

Q. Accordingly, you felt that the transfer would be given in this situation at the Green Mill?

A. Yes.

Q. Is that correct? A. Yes.

Mr. Lee: I have no further questions.

(Testimony of Henry N. Thompson.)

Recross-Examination

By Mr. Waddoups:

Q. Did you interview Chong?

A. Mr. Milani did. I was right there.

Q. Milani interviewed Chong. Where was that, right on the premises? A. At our office.

Q. Oh, at your office? A. Yes.

Q. Ching was not named as a prospective licensee, was he?

A. Not at the time, no, sir.

Q. When you said assisted, it was the impression that he would be there more or less as a manager, bouncer, or some such capacity?

A. That's right.

Q. It is a fair statement, isn't it, to say that the liquor commission, in determining whether they would grant a license, or would grant an application for a transfer, is very much concerned about having someone on the premises at all times [95] that can keep order? A. That's right.

Q. Is it also a fair statement to make that the liquor commission, in issuing a license, particularly a dispenser general license, has a policy against hidden partners? Isn't that correct?

A. That's true.

Q. Where there are hidden partners who do not actually appear as the prospective licensees, but later show up to be taking a portion of the licensed premises? That policy is frowned upon by the liquor commission? A. Yes.

(Testimony of Henry N. Thompson.)

Mr. Lee: That is objected to,—just a moment,—I will ask that the answer be stricken, and the previous question, that the answer be stricken on the ground that it is entirely irrelevant, immaterial and incompetent. It does not go to the matter asked on direct examination; your Honor.

Mr. Waddoups: If your Honor please, counsel for the petitioner,——

The Court: Well, it is cross-examination on this Exhibit E. The objection is overruled. The answer to the first question will remain, so also the answer to the second.

Mr. Waddoups: I think that's all.

Redirect Examination

By Mr. Lee:

Q. One more question. As I understand it, Milani, in your presence, interviewed Hung Chin Ching?

A. We had nothing to do with Ching, not at the office there. We had Tenn over there. [96]

Q. Who interviewed Tenn?

A. Not Ching.

Q. You mean Chong Hing Tenn? A. Yes.

Q. All this thing that was brought up by Mr. Waddoups concerned Chong Hing, not Hung Chin Ching?

A. He asked who we questioned, and I said we questioned Tenn. I think there was information that Ching was going to represent him as a sort of manager.

(Testimony of Henry N. Thompson.)

The Court: The information was taken from one of the partners, it is Chong? That was a part of your official copy which you offered in evidence as part of the records of the liquor commission. Of course, it is in evidence. You offered it. It was received.

Mr. Lee: I think it is an entirely different matter.

The Court: Let me see that Exhibit E.

Mr. Lee: Well, I withdraw my objection.

The Court: He is to be assisted by Mr. Ching at present sergeant of police.

Mr. Lee: I withdraw my objection, your Honor. But I want the record clear that it was regarding Chong Hing Tenn and not Ching.

Mr. Waddoups: That's fair enough.

The Court: The redirect examination would straighten that out.

Mr. Lee: No further questions.

(Witness excused.)

The Court: I see Mr. Nelson is here. Do you want to put him on? [97]

AXEL E. NELSON

called as a witness on behalf of the petitioners,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lee:

Q. State your name? A. Axel E. Nelson.

Q. What is your occupation?

(Testimony of Axel E. Nelson.)

A. Police officer.

Q. How long have you been a police officer?

A. About 13 years.

Q. Now, were you a police officer in 1941?

A. Yes.

Q. Particularly about the month of August, September, and October, 1941? A. Yes.

Q. What was your position with the Honolulu Police Department at the time? What were you, sergeant? A. Sergeant of police.

Q. Do you know the petitioner in this case, Mr. Hung Chin Ching? A. Yes.

Q. Was he a police officer at the time?

A. Yes.

Q. Do you know what his official position was at the time?

A. He was a sergeant of police.

Q. The same rank as you had?

A. That's right.

Q. How much were you making at the time? [98]

A. I don't recall.

Q. What? A. I don't remember.

Q. You don't remember. What are you now, captain? A. Lieutenant.

Q. Now, the Police Department, has it any rules, or had it any rules at the time, in 1941, concerning police officers having an interest in the liquor business? A. Yes.

Q. What was that rule?

A. If you are interested in it financially, either

(Testimony of Axel E. Nelson.)

yourself or your wife in a liquor establishment, then you would have to give up being a policeman or give up the liquor business, one or the other.

Q. Did you have any conversation with Mr. Ching,—Hung Chin Ching, concerning his giving up his position with the Honolulu Police Department to go into the liquor business?

A. I don't recall when it was. I know it was quite some time ago.

Q. Was that in 1941?

A. It may have been. I know it was a long time ago.

Q. Was that before the war?

A. I am not absolutely positive, but it was right around that time, anyway.

Q. About that time before the war, is that correct? A. Yes.

Q. What was said?

Mr. Waddoups: Objected to, your Honor, [99] as incompetent, irrelevant and immaterial, a self-serving declaration.

Mr. Lee: I withdraw it.

Mr. Waddoups: Hearsay.

Mr. Lee: I withdraw it.

Q. Was there a conversation had with Mr. Ching, concerning Mr. Ching's entry into the liquor business? Was there a conversation had between you? A. Yes. There was.

Q. Between you and Mr. Ching, wherein he would quit his job in the Police Department and go into the liquor business?

(Testimony of Axel E. Nelson.)

A. Yes. There was.

Q. That conversation was had before the war?

A. I wouldn't want to say that definitely, but I know it was a number of years ago. It was right around 1941. I don't know for certain.

Mr. Lee: No further questions.

Mr. Waddoups: If your Honor please, I will move to strike the testimony from the record relative to the conversation about the liquor business because it has not been shown to relate to this particular business.

The Court: Objection overruled. The motion will be denied.

Mr. Waddoups: No questions.

Mr. Lee: That's all.

(Witness excused.)

Mr. Lee: Now, if your Honor please, may I recall Chong Hing Tenn in substantiation of my opening statement this morning? [100]

CHONG HING TENN .

a respondent herein, was recalled, and testified further as follows:

Further Direct Examination

By Mr. Lee:

Q. Now, Mr. Tenn, yesterday you stated that Mr. Kui Hing Tenn, your brother, was handling the financial end of this business. Was that true? Is that true?

(Testimony of Chong Hing Tenn.)

A. When we made the first payment on there.

Q. When was that first payment?

A. For the purchase of the business.

Q. That was the only thing that Kui Hing Tenn handled?

A. For the purchase, yes.

Q. And who handled the rest of the financial and legal transaction?

A. I did most of it.

Q. You did that, not Kui Hing?

A. Not Kui Hing. I did most of it.

Q. I say, you did most of it?

A. Yes.

Q. Now, you say that Kui Hing made the first payment?

A. Yes.

Q. Do you know what the first payment was?

A. For the purchase.

Q. How much was it?

A. \$15,000.

Q. No more than that?

A. \$25,000 in all in the whole thing. [101]

Q. Did you pay \$10,000 yourself at the time when Kui Hing Tenn paid the \$10,000?

A. I give that money to him, then he gave it to me to pay it. Something like that. I don't remember how that was.

Q. You just stated now that you were the one who handled the finances.

A. I mean the purchase price.

Q. On the payment of the \$15,000?

A. I say, on the purchase price, he had \$15,000 to pay. He paid \$15,000.

Q. That's right. At the time I am asking did you pay the other \$10,000? Answer that yes or no.

(Testimony of Chong Hing Tenn.)

Mr. Waddoups: I think he is confused.

A. I don't remember if he paid or I did. He gave me back the money to pay to Hiram Fong. I don't remember who paid at that time. The record shows it has been paid. Either he or I. I couldn't remember. It is eight years ago.

Mr. Waddoups: I think he is confused between paying and delivering.

A. Delivery; delivering the check?

The Court: Do you know who took the money down to Hiram Fong's office, the last \$10,000?

A. The last \$10,000. I couldn't be sure if I did it.

Q. How much was the inventory?

A. \$10,000 and something. I don't remember how much.

Q. Well, I will show you a document here, a mortgage and a note on the Green Mill. This might help you in refreshing your recollection. Take a look at this document.

A. Yes. I remember that. [102]

Q. You are familiar with that?

A. I signed this note here.

Q. You signed a note for \$10,000?

A. Yes.

Q. That was for inventory?

A. For inventory.

Q. Was that the price of that; was that amount for inventory or was that for something else? Are you sure that was for inventory?

(Testimony of Chong Hing Tenn.)

A. I think it is for the inventory.

Q. You mean that you don't know whether that was for the inventory or the balance of the purchase price on the business? A. No. It is inventory.

Q. You are sure about that, now?

A. It is the balance,—the purchase price said \$25,000. It could not be \$46 more, not more and not less.

Q. Was the inventory agreed upon as to its amount by the Lums and you?

A. Set by the bookkeeper.

Q. That bookkeeper, was that Kam Tai Ching?

A. Yes.

Q. He was the bookkeeper for Lum, and half owner of the business? A. And also for,—

Q. For you? A. For a while.

Q. For a while. Until the end of the year, 1941?

A. Yes.

Q. After 1941 you had a bookkeeper by the name of Wallace [103] Aoki? A. He died,—

Q. He died?

A. —and naturally, we had to hire another one.

Q. And he knew about the inventory? —Kam Tai Ching?

A. Of course, he made the inventory.

Q. Did you know him well? A. Kam Tai?

Q. Before his death?

A. No, not very well.

Q. But you knew him well enough to want him

(Testimony of Chong Hing Tenn.)

to continue with his bookkeeping? You hired him, is that right?

A. The former owner recommended him he is a good man, a capable man, so we let him carry on until he died.

Q. Was he a good man before his death? Did he keep your books good? A. Very fair.

Q. You had no complaints against him?

A. No.

Q. He was an honest man?

A. That I couldn't tell you whether he was honest or not. So far he is honest with us.

Q. He didn't cheat you?

A. I don't know that he cheat me.

Q. He didn't cheat the Green Mill out of anything? A. I couldn't tell you that.

Q. Didn't you have any receipt on this \$10,000 that you paid into the business?

A. The receipt must be misplaced. The only way that you can [104] do is collect the bank statements.

Q. Do you have your own bank statement?

A. We can get the check, if I check up.

Q. You have no objection to bringing that check into court, would you?

Mr. Waddoups: We will produce it if it can be found, Mr. Lee.

Mr. Lee: We will ask the Court to ask the respondents,——

The Court: If he can find it.

Mr. Waddoups: If we can find it we will pro-

(Testimony of Chong Hing Tenn.)

duce the evidence of payment being made,—be delighted to.

Q. Now, this price of the inventory, was that \$10,046.27?

A. I presume that is the inventory.

Q. I don't want any presumption. You were the one who handled the financial details of the Tenn brothers' business.

A. Yes.

Q. Don't you know what the inventory was?

A. That is the figure. It must be the inventory, that money that we owed. The purchase price was already paid. This was the balance here. We couldn't raise that money. We asked for the inventory, and we signed a note to mortgage the place.

Mr. Lee: We will offer this in evidence.

Mr. Waddoups: No objection, your Honor.

Mr. Lee: That is the note.

The Court: The mortgage and note of the Green Mill, covering what is supposed to be the inventory. What is the date of it? [105]

Mr. Lee: October 18.

The Court: 10-18-41. It will be received and marked Petitioner's Exhibit F.

Mr. Waddoups: Can't the note and the mortgage be received as one exhibit?

Mr. Lee: Yes.

The Court: One exhibit.

(The documents heretofore referred to were marked Petitioner's Exhibit F, and received in evidence.)

(Testimony of Chong Hing Tenn.)

PETITIONER'S EXHIBIT F

Honolulu, Hawaii,, 1941

\$10,046.25

For Value Received, we jointly and severally promise to pay to the order of Elsie Young Lum the sum of Ten Thousand Forty-six Dollars and Twenty-five Cents (\$10,046.25) with interest at Six per cent (6%) per annum from the date of this note until the whole sum has been paid in full.

Payments shall be made in five (5) equal monthly installments beginning with the 1st day of November, A. D. 1941. The whole amount of this note shall be paid in full on or before the 1st day of March, A. D. 1942.

Should default be made in any of the installments herein, then this note at the option of the holder hereof, may be accelerated and all installments shall then be due and payable.

Should it be necessary to place this note in the hand of an attorney for collection of any amounts due hereon, the undersigns agree to pay all costs and expenses incurred together with reasonable attorney's fees.

This note is secured by a chattel mortgage made this date by the undersigns as Mortgagor to Elsie Young Lum as Mortgagee.

/s/ KUI HING TENN,

/s/ CHONG HING TENN,

.....,

Fook Hing Tong.

(Testimony of Chong Hing Tenn.)

Know All Men by These Presents: That we, Kui Hing Tenn, Chong Hing Tenn, of Honolulu, City and County of Honolulu, Territory of Hawaii, and Fook Hing Tong, of Wailuku, Maui, Territory aforesaid, parties of the first part and Mortgagors, being justly indebted to Elsie Young Lum, of Honolulu, City and County of Honolulu, Territory aforesaid, party of the second part and Mortgagee, in the sum of Ten Thousand Forty-six Dollars and Twenty-five Cents (\$10,046.25) which debt is hereby acknowledged, have for the purpose of securing the payment of said debt, do hereby sell, assign, transfer and mortgage unto the said party of the second part, her administrators and assigns, all our right, title and interest in and to the business of Green Mill Cafe, the merchandise, equipment and fixture therein, together with the lease of the said premises.

To Have and to Hold the same forever to the said Elsie Young Lum, her administrators and assigns forever, but subject however, to the express condition, that if we shall pay or caused to be paid unto the said Elsie Young Lum, her administrators or assigns, the full sum of Ten Thousand Forty-six Dollars and Twenty-five Cents (\$10,046.25) owed by us to her, which sum of Ten Thousand Forty-six Dollars and Twenty-five Cents (\$10,046.25) is to be paid in five (5) equal monthly installments according to the terms of that promissory note of even date, then these presents to be void, otherwise in full force and effect.

(Testimony of Chong Hing Tenn.)

And we do hereby covenant and agree to and with the said Elsie Young Lum that in case of default made in the payment of the promissory note above mentioned when the same shall become due; or if any attempt shall be made to dispose off or injure said property, then thereupon and thereafter, it shall be lawful, and we hereby authorize the said Elsie Young Lum, her administrators and assigns, or her agent to take immediate possession of said property wherever they may be found and to sell the same and all equity of redemption either at public or private sale, after giving at least five (5) days' notice thereof by writing to us, retaining such an amount for payments due or not due, a reasonable attorney's fee and such other expenses as may have been incurred in the advertising and selling of said property, returning the surplus money if any there be, to us, our administrators and assigns. If from any cause, said property shall fail to satisfy the above mentioned debt, cost and charges, we covenant and agree to pay the deficiency.

In Witness Whereof, we, the said parties of the first part, have hereunto set our hands this 18th day of October, A. D. 1941.

/s/ KUI HING TENN,

/s/ CHONG HING TENN,

/s/ FOOK HING TONG.

Filed June 22, 1948, Circuit Court, T. H.

Filed Oct. 12, 1948, Supreme Court, T. H.

(Testimony of Chong Hing Tenn.)

Mr. Lee: And also by stipulation of counsel, this assignment of the lease, dated October 30, 1941.

Mr. Waddoups: No objection to that being received.

The Court: Dated when?

Mr. Lee: October 30, 1941.

The Court: It will be received in evidence, and marked Exhibit G.

(The document heretofore referred to was marked Petitioner's Exhibit G, and received in evidence.)

PETITIONER'S EXHIBIT G

Assignment of Lease

This Indenture made this 30th day of October, A. D. 1941, by and between Lum Kam Hoo, a citizen of the United States of America, of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter known as the "Assignor," party of the first part, and Kui Hing Tenn, and Chong Hing Tenn, both citizens of the United States of America and both of Honolulu, City and County and Territory aforesaid, and Fook Hing Tong, a citizen of the United States of America, of Wailuku, Island of Maui, Territory aforesaid, hereinafter known as the "Assignees," parties of the second part,

Witnesseth:

That for and in consideration of the sum of Ten

(Testimony of Chong Hing Tenn.)

Dollars (\$10.00) and other valuable consideration paid by the Assignees to the said Assignor and of the covenants and agreements to be performed and observed herein by the Assignees, the said Assigner does hereby assign, sell, transfer, grant and set over unto the said Kui Hing Tenn, Chong Hing Tenn and Fook Hing Tong, the Assignees, their heirs, executors, administrators and assigns, all his, the Assignor's right, title and interest in and to that certain Indenture of Lease dated the 16th day of September, 1938, as modified by that certain Indenture dated the 20th day of January, 1941, from National Clothing, Limited, an Hawaiian corporation, as Lessor, to Lum Kam Hoo as Lessee, of the premises situated at 1111, 1115 and 1119 Bethel Street, Honolulu and more commonly known as the Green Mill Cafe premises.

Subject, However, to the lease agreement and option to lease to John Lai of the premises Number 1119 Bethel Street, Honolulu.

To Have and to Hold the said premises unto the said Kui Hing Tenn, Chong Hing Tenn and Fook Hing Tong, their heirs, executors, administrators and permitted assigns, from the 1st day of October, 1941, for and during all the residue and remainder of said term in said lease specified, subject, nevertheless, to the lease agreement and option to John Lai and to the rents, covenants, conditions and provisions mentioned in said lease agreement dated September 16, 1938, and January 20, 1941.

(Testimony of Chong Hing Tenn.)

The Assignor does hereby covenant with the said Kui Hing Tenn, Chong Hing Tenn, and Fook Hing Tong, their heirs, executors, administrators and permitted assigns, that the covenants and agreements in said lease contained on the part of the Lessee to be observed and performed have been up to the date hereof duly observed and performed.

And for the consideration of said assignment the said Assignees do hereby covenant with the said Assignor, his executors and administrators, that they will henceforth pay the rent reserved and perform the covenants and agreements on the part of the Lessee to be performed in said lease agreements, and will keep the said Assignor, his executors and administrators indemnified against all actions, claims and liabilities for the non-payment of said rent or breach of said covenants and agreements.

In Witness Whereof, the said Lum Kam Hoo, Kui Hing Tenn, Chong Hing Tenn and Fook Hing Tong have hereunto set their hands the day and year first above written.

Assignor:

/s/ LUM KAM HOO.

Assignees:

/s/ KUI HING TENN,

/s/ CHONG HING TENN,

/s/ FOOK HING TONG.

(Testimony of Chong Hing Tenn.)

Territory of Hawaii,
City and County of Honolulu—ss.

On this 30th day of October, A. D. 1941, before me personally appeared Lum Kam Hoo, Kui Hing Tenn and Chong Hing Tenn, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[Seal] /s/ ELEANOR YOUNG LUM,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission expires June 30, 1945.

Territory of Hawaii,
County of Maui—ss.

On this 22nd day of November, A. D. 1941, before me personally appeared Fook Hing Tong, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ E. F. TAM,
Notary Public, Second Judicial Circuit, Territory
of Hawaii.

My Commission expires June 30, 1945.

(Testimony of Chong Hing Tenn.)

Consent is hereby given to the hereinabove described assignment.

NATIONAL CLOTHING,
LIMITED,

By
T. F. Farm,
President.

By
H. Tyau Akui,
Treasurer.

Filed June 22, 1948, Circuit Court, T. H.

Filed Oct. 12, 1948, Supreme Court, T. H.

Mr. Lee: And also by agreement, your Honor, the affidavit of publication which is published in the newspaper, the Honolulu Advertiser, by the owner of the premises, Elsie Lum, that she had sold the business as of October 1, to the three brothers, and published on October 23 and 24.

The Court: It will be received in evidence, and marked Petitioner's Exhibit H.

(The document heretofore referred to was marked Petitioner's Exhibit H, and received in evidence.)

(Testimony of Chong Hing Tenn.)

PETITIONER'S EXHIBIT H

In the Matter of
Non-Responsible Notice—Elsie Y. Lum

Affidavit of Publication

Territory of Hawaii,
City and County of Honolulu—ss.

Ernest Siu, being duly sworn, deposes and says, that he is Clerk of the Advertiser Publishing Company, Limited, publishers of The Honolulu Advertiser, a daily newspaper published in the City and County of Honolulu, Territory of Hawaii, that the ordered publication in the above entitled matter of which the annexed is a true and correct printed notice, was published two times in The Honolulu Advertiser, aforesaid, commencing on the 23rd day of October, 1941, and ending on the 24th day of October, 1941 (both days inclusive), to wit, on October 23, 24, 1941, and that affiant is not a party to or in any way interested in the above entitled matter.

/s/ ERNEST SIU.

Subscribed and sworn to before me this 24th day of October, A. D. 1941.

/s/ SUN YAN AMJONG,

Notary Public of the First
Circuit.

My commission expires June 30, 1945.

(Testimony of Chong Hing Tenn.)

Notice is hereby given that the undersigned has on the 1st day of October, 1941 sold all her right, title and interest in and to the business of Green Mill Cafe situated at 1111 Bethel street, Honolulu, to Kui Hing Tenn, Chong Hing Tenn and Fook Hing Tong and will not be responsible for any debts of said business hereafter.

/s/ ELSIE YOUNG LUM.

(Adv. Oct. 23, 24)

Filed Oct. 12, 1948, Supreme Court, T. H.

Filed June 22, 1948, Circuit Court, T. H.

Mr. Lee: And this is the partnership notice, also [106] stating that the business was,—that they entered into business as of October 1, 1941.

The Court: It will be marked Exhibit I, as in evidence.

(The document heretofore referred to was marked Petitioner's Exhibit I, and received in evidence.)

PETITIONER'S EXHIBIT I

In the Matter of Forming a copartnership under the name of Green Mill Cafe.

Territory of Hawaii,
City and County of Honolulu—ss.

Ernest Siu, being duly sworn, deposes and says, that he is Clerk of the Advertiser Publishing Com-

(Testimony of Chong Hing Tenn.)

pany, Limited, publishers of The Honolulu Advertiser, a daily newspaper published in the City and County of Honolulu, Territory of Hawaii, that the ordered publication in the above-entitled matter of which the annexed is a true and correct printed notice, was published two times in The Honolulu Advertiser, aforesaid, commencing on the 23rd day of October, 1941, and ending on the 24th day of October, 1941 (both days inclusive), to wit, on October 23, 24, 1941, and that affiant is not a party or in any way interested in the above-entitled matter.

/s/ ERNEST SIU,

Subscribed and sworn to before me this 24th day of October, A.D. 1941.

/s/ SUN YAN AMJONG,

Notary Public of the First
Circuit.

My commission expires June 30, 1945.

Notice is hereby given that Kui Hing Tenn, Chong Hing Tenn and Fook Hing Tong, all of Honolulu, have on the 1st day of October, A.D. 1941, entered into a copartnership for the carrying on of a restaurant and liquor business under the firm name and style of "Green Mill Cafe," situated at 1111 Bethel Street, Honolulu, Hawaii.

/s/ KUI HING TENN,

/s/ CHONG HING TENN,

/s/ FOOK HING TONG.

(Adv. Oct. 23, 24.)

(Testimony of Chong Hing Tenn.)

Affidavit of Publication

Filed October 12, 1948, Supreme Court, T. H.

Filed June 22, 1948, Circuit Court, T. H.

Q. Now, did you instruct Hiram Fong to draw up the articles of partnership prior to October 1, 1941? A. Yes.

Q. You entered into the partnership on October 1, 1941. Did you instruct Hiram Fong to draw up articles of partnership before October 1, 1941?

A. Before that? No.

Q. Before that; no.

A. We didn't instruct him.

Q. Yesterday you didn't say who told the lawyers to draw up these papers?

Mr. Waddoups: He said that he thought that he did.

A. You asked me a different thing.

Q. All right. Let me ask you this question: Did you instruct Mr. Fong to draw up the articles of copartnership concerning this business, or was it somebody else?

A. I don't remember whether I instructed him.

Q. You don't remember?

A. I don't remember whether I instructed him or he suggested to us to have the partnership drawn up.

(Testimony of Chong Hing Tenn.)

Mr. Lee: No further questions.

Mr. Waddoups: That's all.

(Witness excused.) [107]

Mr. Lee: May we have a short recess for a minute? We want to contact a party at LeRoys.

The Court: Very well.

(Recess.)

Mr. Lee: If your Honor please, these two parties from Leroy's just arrived, and I would like to have them excused for just a minute. I had Mr. Chong Hing on the stand for a minute and let him go without asking one question. With counsel's and the court's permission, may I ask one more question?

Mr. Waddoups: I have no objection.

CHONG HING TENN

a respondent herein, was recalled, and testified as follows:

Further Direct Examination

By Mr. Lee:

Q. You testified the other day that Hung Chin Ching was down at the Green Mill. Was he assisting you in handling this business before you consummated this final deal? Was he helping you?

A. Yes. He came in and tried to help me.

Q. What did he do? What was the understanding?

(Testimony of Chong Hing Tenn.)

A. He was supposed—he was going to quit the police force and come over there and work.

Q. That was the understanding? That was developed at your home? Was that that conference, the family conference? Is that correct?

A. Yes.

Q. It was also the understanding after that conference that you were supposed to get \$250 besides your interest in the business? [108]

A. That was agreed.

Q. Mr. Ching, when he quit the police department, was also to get \$250 pay at the Green Mill?

A. Yes.

Q. Is that true? A. Yes.

Q. That was the understanding? A. Yes.

Q. All of this agreement—that took place at your family home, did it? A. Yes.

Q. Mr. Ching did work around there with you, is that correct?

A. Yes. He was there for I don't know how long. A few days, I think, or a week.

Q. Wasn't it about a month?

A. Well, I don't remember.

Q. Three weeks to a month? Approximately?

A. He just didn't show up any more.

Q. Did you folks pay him anything?

A. Two weeks or something. I don't know.

Q. Did he get any pay?

(Testimony of Chong Hing Tenn.)

A. Well, we didn't pay him anything.

Q. Did they pay you \$250? A. Who paid?

Q. I mean the copartnership. Did you receive any pay besides your interest in the copartnership?

A. Yes.

Q. How much were you paid at the beginning?

A. \$150. [109]

Q. \$150? A. Yes.

Q. \$150 or \$250?

A. \$150 or \$250. I don't remember.

Q. It was about \$250, wasn't it?

A. Check up with the records on the book.

Q. Will you check up the records so that I can ask you about it tomorrow morning? A. Yes.

Q. Now, I also asked you about Kam Tai Ching. He is dead.

Mr. Lee: If your Honor please, may I have the original file?

Q. I will show you here an affidavit which is a part of the record, attached to the petition, the original petition, sworn to by Kam Tai Ching, and I want you to read this, a copy of which is in my file.

Mr. Waddoups: Does counsel propose to make evidence out of this affidavit?

Mr. Lee: No, your Honor. We will offer it in evidence later. I just want him to read it first.

Q. Was Kam Tai Ching bookkeeper for Mrs. Elsie Lun, who operated the Green Mill before you folks came into the picture, as he swore under oath? He was, wasn't he? A. Yes.

(Testimony of Chong Hing Tenn.)

Q. And also continued to serve as a bookkeeper after the transfer of the business to Fook Hing Tong, Chong Hing Tenn, and Kui Hing Tenn and Hung Chin Ching as partners? Is that statement true or false? [110]

A. I don't know how he got Hung Chin Ching as a partner.

Q. Is that statement true or false, or is it partly true and partly false?

Mr. Waddoups: Is this an attempt to discredit this witness? If it is, I am going to object on relating to any statement made by Kam Tai Ching, on the ground that no proper foundation has been laid; that the witness is not available for cross-examination. That is an affidavit attached to the bill where he is not here to give proof is not evidence and could not be considered evidence. It would be prejudicial to attempt to make it such. It is improper to try to show what somebody else said before his death is false.

The Court: It is asking something about what somebody else said. You can ask him directly whether or not this man was anything that is set out in this affidavit, but to ask whether or not what the client says is true or false is improper, it seems to me.

Mr. Waddoups: That's correct.

Mr. Lee: Well, your Honor, it is an unfortunate thing that this man is dead.

The Court: Yes. You can ask him if this man was a partner.

(Testimony of Chong Hing Tenn.)

Mr. Waddoups: That's easy, but not what somebody else said he was.

Mr. Lee: Well, if your Honor please, it is a matter of permitting the question. I don't see any objection——

The Court: The court does and will sustain it.

Mr. Lee: All right, your Honor. [111]

Q. Did you and Hung Chin Ching take exclusive charge and manage this business for a period of six weeks at the time that you folks bought this business? A. No. Not six weeks.

Q. About how many; three weeks?

A. Two weeks, three—two weeks.

Q. About two weeks? A. Yes.

Q. Wasn't Hung Chin Ching in charge of the sales, and of hiring and firing all employees? You were in charge——

The Court: Wait a minute. Did you get the answer to that question?

Mr. Waddoups: No.

The Court: Let's get the answer to the question.

A. You mean that he is in charge?

Q. Yes. That was the agreement?

A. That was the agreement, yes.

Q. It was also agreed that you would handle the proceeds of the sales and the banking of moneys, which you did, isn't that true? You handled all the cash of the business?

A. After that thing is transferred or before?

Q. Well, this is just before, during the operation of the business, both before——

(Testimony of Chong Hing Tenn.)

A. Before, when the owner is still there yet, we take charge, him and I check up.

Q. But it was after October 1st, the agreement, wasn't it after October 1st?

A. No. October 1st, the owner still have a lien on that place yet until all the documents is all transferred, then I [112] took complete charge.

Q. I still don't know when the partnership took place.

A. When the liquor was transferred, then it took place.

The Court: You mean the liquor license?

A. When it was transferred and the papers were drawn up there.

Q. Was that on October 10, 1941?

A. Somewhere around there.

Q. Now, this division of duties, did that continue beyond October 10, 1941, from the time that the liquor commission granted the license?

A. I think he was there.

Q. Both before and after, wasn't it?

A. I think so. He was there yet, I think.

Mr. Lee: No further questions.

Recross-Examination

By Mr. Waddoups:

Q. Did he do any work around that place after he took his trip to Maui?

A. No. Never came back any more.

Q. Was he there just prior to the time that he

(Testimony of Chong Hing Tenn.)

went to Maui, a few days before that time, was he still there?

A. Yes. He was there. He never show up for a week.

Q. Did he do any drinking around that establishment? A. When he first came in, yes.

Q. Did you have trouble over that?

A. We had a little trouble over that.

Q. By "he" I mean Ching. [113]

A. Ching.

Q. Did he do any drinking around that establishment? A. Yes. He drinks.

Q. Did you and he have any pilikea over his drinking?

A. I objected to it, because the regulation is pretty strict.

Q. He never came back there after his trip to Maui? A. No.

Mr. Waddoups: That's all.

Redirect Examination

By Mr. Lee:

Q. I forgot to ask you one more question: did you receive a letter from your brother, which is Petitioner's Exhibit A-1? Did you receive this letter from Fook Hing Tong, your brother?

A. I think so.

Q. Well, you did, didn't you? A. Yes.

Q. Did you receive this letter a few days after he wrote it, approximately, within a reasonable time?

(Testimony of Chong Hing Tenn.)

A. I think so. It came direct to me.

Q. Direct to you? A. Yes.

Q. Is it true that he said that he didn't—that he received word that you were not holding to your end of the bargain as agreed upon by the whole family? “We talked it over, now I find out that you are trying to run everything your way.”

A. Yes.

Q. “Please understand that I have H. C. Ching there to look out after my interests and that your position was to take care of the finances and the monetary end. You and he are the sole [114] administrators there and that you take care of the above and Ching handles the personnel. I am acquainted with H. C. Ching and to be frank I would not put up the money if it had not being for the fact that Ching was instrumental in getting the business for us and further let us be frank that if Ching is not there, I would like you to buy me out. I did not finance you the last time on the Motor Coach Cafe, knowing that you have plenty to learn about business, and I repeat that if H. C. Ching was not helping to handle this business I would not go in. So that is my intention that you abide by what was consummated at the verbal conversation held at home. If you think you can handle the place by yourself you can have my shares, but I cannot afford to spare that much cash for you to promote any business. I hope this makes it plain to you what my sentiments are. Sometimes too much money and being too busy gets into a fel-

(Testimony of Chong Hing Tenn.)

low's head and he gets all excited. Tell Dick to stay away from there and not meddle around too much with the waitresses or the personnel."

Mr. Waddoups: Well, are you asking him? I think we are wasting the court's time to just read it.

Mr. Lee: That's all right. I would like to impress it upon him here and see whether or not he agrees with this.

A. You want an answer to it?

Q. Yes.

A. Well, just as Mr. Waddoups says, that he had been drinking. You can't get along with a man drinking on the job, and taking liquor away, so I went and ran it myself to protect the business.

Q. That was what the fight was about?

A. Sure. [116]

Q. Between you and Ching?

A. The license would be taken away.

Q. Was that the reason why you people got him out of the partnership?

A. There is no partnership made yet. He is supposed to bring the money. I understood the money is supposed to be waiting, for money to have the deal closed. He could not produce. I asked my brothers what they think about it. "No cash, no dice."

Q. When you asked your brother that, which brother are you talking about?

A. Fook Hing Tong.

Q. He was on Maui at the time?

(Testimony of Chong Hing Tenn.)

A. Corresponding. When he comes in I said, "I got no money yet."

Q. Your brother Fook Hing Tong was on Maui on October 1, wasn't we, at the time that this partnership was supposed to have been consummated?

A. I think so. I don't remember. He lives in Maui.

Q. Did you go and see Hiram Fong at the time that you had this dispute with Hung Ching Ching?

A. No.

Q. To draw up the articles of copartnership?

A. I don't remember. I went to see Hiram Fong.

Q. You never saw Hiram Fong about drawing up the papers in partnership?

A. When things were ready, Hiram Fong called me up and said, "What are you going to do?"

Q. When was that, was that about October 6, or before that?

A. Around the month of October.

Q. That is the first part or the first week? [116]

A. During the month of October. I couldn't remember the date. The date shows when the partnership was drawn. That must be the date.

Q. Well, now, you say that you and Ching were operating this business for about two weeks. Was that also in October?

A. That was in October, yes.

Q. The first two weeks in October?

A. Yes. That is the first of October.

Q. I see. And when did you sign the articles of copartnership?

(Testimony of Chong Hing Tenn.)

A. I don't remember the date. It shows in there.

Q. When did you have any conversation with Hiram Fong about drawing these partnership papers? A. October.

Q. Was it in the first week of October?

A. The first or the second. I think after the liquor—the approval of the transfer. Then we can writing the partnership. Otherwise we——

Q. How do you account for the fact that Hiram Fong prepared the bill of sale prior to October 10 to only the three brothers which you filed with the liquor commission, that was in evidence here?

A. I account for that when you do business, when you get the cash down, you have to put the cash down. The other fellow can come in and the owner can wait, eh?

Q. You didn't pay Mr. Lum, did you, until——

A. The first payment was made on the——

Q. ——October 15, wasn't it? When was the first payment made?

A. October 1, I think. [117]

Q. Before you took over? October 1st?

A. Yes.

Q. (By Mr. Lee): Mr. Waddoups, this copy of the bill of sale which was filed before the liquor commission—we have a bill of sale which was in evidence now, dated October 20—this one is dated October 10. We haven't got a copy of this bill of sale in evidence.

The Court: Well, is it any different?

(Testimony of Chong Hing Tenn.)

Mr. Lee: No. It is the same thing, only a different date.

The Court: As I understood from the testimony of Mr. Thompson from the liquor commission, that was the bill of sale.

Mr. Waddoups: That's correct. After the transfer they insisted on another one.

The Court: Proposed bill of sale.

Mr. Lee: Is that one that was filed with the liquor commission that is dated October 10, the one that is on file?

The Court: Yes. It appears that the liquor license was transferred on the 10th.

Mr. Lee: That's correct, your Honor.

The Court: So that there is nothing in the record that would seem to need straightening out, because the one filed with the liquor commission, it was understood that it was not the bill of sale, but only the proposed bill of sale that was to be executed. We have in the record a bill of sale that was executed. It is the same as that.

Mr. Waddoups: Except for the dates.

Mr. Lee: Well, may this copy be received, which is [118] on file with the liquor commission, which is the same thing in the records, without calling Mr. Thompson back, unless Mr. Waddoups—

Mr. Waddoups: No. We don't object to it.

The Court: Very well. It will be received as Exhibit J.

(The document heretofore referred to was marked Petitioner's Exhibit J, and received as evidence.)

(Testimony of Chong Hing Tenn.)

PETITIONER'S EXHIBIT J

Rec'd by Liquor Com. October 20, 1941.

Indenture made this 10th day of October, A.D. 1941, by and between Elsie Young Lum, of Honolulu, City and County of Honolulu, Territory of Hawaii, party of the first part and Vendor, and Chong Hing Tenn, Kui Hing Tenn and Fook Hing Tong, all of the same place, parties of the second part and Purchasers,

Witnesseth:

That for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration in hand paid by the Purchasers to the vendor, the full receipt whereof is hereby acknowledged, the Vendor does hereby sell, assign, transfer and set over unto the purchasers, their administrators and assigns, all her, the Vendor's right, title and interest, in and to the business of "Green Mill Cafe" located at 1111 Bethel Street, Honolulu, City and County and Territory aforesaid, together with all the furniture, fixture, equipment and good will of said business.

To Have and to Hold the same unto the Purchasers, their administrators and assigns forever.

And the Vendor does hereby for herself, her administrators and executors, covenant and agree to and with the said Purchasers, their administrators and assigns, that she has good title to said property; that they are free and clear from all encumbrances and that she will Warrant and Defend the

(Testimony of Chong Hing Tenn.)

above described property hereby sold unto the Purchasers, their administrators and assigns, against all and every person whomsoever lawfully claiming title thereto.

In Witness Whereof, the Vendor hereto has hereunto set her hand the day and year first above written.

/s/ ELSIE YOUNG LUM.

Acknowledged on the 10th day of October, A.D. 1941.

ELEANOR YOUNG LUM,
Notary Public.

Filed Oct. 12, 1948, Supreme Court, T. H.

Filed June 22, 1948, Circuit Court, T. H.

Q. As a matter of fact, it was you who hired Hiram Fong, wasn't it, to act as attorney for the purchase in handling the bill of sale and the transfer of the liquor license and everything else?

A. I think so. Of course, I don't know I hired Fong directly. My brother knows him very well. He has been his attorney. He has been Lum's attorney. One attorney do the whole thing.

Q. So the file concerning the Green Mill, Hiram Fong's legal file—all these documents concerning the thing was in your file in Hiram Fong's office, wasn't it? A. All in Hiram Fong's office.

(Testimony of Chong Hing Tenn.)

Q. Didn't he give you the file when this case came about? A. I went and asked him.

Q. And you turned it over to Mr. Waddoups, the attorney in this case, isn't that true?

A. Yes.

Q. Now, in this transaction at the time, back at the time, your brother Fook Hing Tong was the fellow who had—he was more or less calling the shots in this thing. He was the big boy. He had the money? [119]

A. He had his share. I have my share.

Q. You at one time prior to this tried to interest him in the Motor Coach Cafe, didn't you?

A. Yes.

Q. And he refused to go in with you, isn't that true?

A. Well, he didn't refuse absolutely. We did some checking. I forgot about it. I went home. I went home in the country. I didn't stay down here.

Q. This statement by him, Fook Hing, that you and Hung Chin were the sole administrators there, and that Hung Chin was supposed to handle the personnel, that was according to the verbal agreement? A. Yes.

Q. At your home? A. Yes.

Q. Where the three of you were present with Mr. Ching and your father? A. Yes.

Q. Isn't that true? A. Yes.

Q. So this thing that he is referring to is merely the particular thing that you people had agreed upon? A. His working?

(Testimony of Chong Hing Tenn.)

Q. At that conference at the home it was also agreed among you brothers, etc., that Hung Chin Ching was supposed to put up \$3,000 as his share into the business, isn't that right? A. Yes.

Q. You people were there, you understand that?

A. Yes. [120]

Q. In other words, everybody agreed to that, all the three brothers, with Mr. Ching, including the brother Fook Hing Tong, that Hung Chin Ching was supposed to put in \$3,000 as his share, and he would quit the police department work and get \$250, besides, just like you? A. Yes.

Q. Wasn't that the agreement? Your answer is "Yes"? A. Yes.

Q. And calling your attention to this agreement, by the time that you got this letter, which was a little after October 6, 1941, because it is dated October 6, 1941, you had already instructed Hiram Fong to draw up these partnership papers and exclude Mr. Ching, isn't that true?

A. Which partnership?

Q. The partnership among your three brothers. Hadn't you already instructed Hiram Fong to draw up the partnership papers excluding Mr. Ching as one?

A. He never put up his money. So he was excluded.

Q. You had already told Hiram Fong, before October 6, 1941, to exclude Hung Chin Ching, isn't that right?

(Testimony of Chong Hing Tenn.)

A. I told Hiram Fong? I don't remember if I have told him that. October 6th? October 6th?

Q. Wasn't it before October 6th that you told Hiram Fong?

A. After that, I think, maybe, not before October 6th. We just took over October 1. He was there a few days, just waiting for the money to close our business. No. I don't think I told him before that.

Q. When did you have this pilikea about the drinking at [121] the place?

A. The first day.

Q. The first day? A. Yes.

Q. That was October 1? A. Yes.

Q. About October 1st? A. Yes.

Q. About the drinking? A. Yes.

Q. From then on, your relations with Hung Chin Ching was,—while he was over there at the place were very bad? A. Not real bad.

Q. About how would you characterize them?

A. I said to run a business like that, nobody can stand it. I have to protect my interest in it.

Q. You didn't want him around?

A. I didn't fire him. No. I didn't want him around. I just held on. You have the letter there.

Q. You couldn't fire him, because at the time, on October 1st, he was to be a partner, wasn't he?

A. October 1st?

Q. Yes. You couldn't fire him, could you?

A. I could if I had the majority.

Q. No, but you didn't have the majority, did you? Did you have the majority?

(Testimony of Chong Hing Tenn.)

A. I didn't ask for it.

Q. Well, do I take it to mean that you didn't have the [122] majority?

A. I didn't try and find out if I could get it.

Q. If you could get the majority? A. Yes.

Q. Did you think of firing Hung Chin Ching the first day? A. No.

Q. At the time you had not raised your \$10,000 supposedly, had you, on October 1st, I am talking about? A. Not yet, no.

Q. The only fellow who had raised any money at the time was Fook Hing Tong, on October 1st. He had left \$10,000 with Kui Hing before he went to Maui? A. Yes.

Q. Isn't that true?

A. Kui Hing and Fook Hing Tong, yes. \$15,000 was put in.

Q. So they put in the whole \$15,000? Or was that put in by Fook Hing Tong?

Mr. Waddoups: That has been gone over at least five times. Fook Hing Tong put in \$10,000, and the other man \$5,000.

The Court: Objection sustained.

Mr. Lee: Later, Fook Hing Tong, one of the respondents in this case stated that he put in \$15,000. Now, on examination Fook Hing Tong states that he actually only put in \$10,000.

The Court: This man has testified that the doctor put up \$10,000, and Kui put up \$5,000.

Mr. Waddoups: Correct.

(Testimony of Chong Hing Tenn.)

Mr. Lee: Well, I know, but it seems to me very relevant,——

The Court: It is relevant, but we have gone over [123] it three or four times. It is the same thing. I want to get through with this.

Mr. Lee: I am not prolonging the case. This is the gist of the whole case.

The Court: The court feels that this has been gone into amply and sufficiently. It has been covered not once, but two or three times. This is the third time that this witness has been recalled to the witness stand. Let's move on to something that is new and different.

Mr. Lee: Well, your Honor, I am trying to get the dates, because the dates are very important as to the element of agreement among the parties. This witness has been very evasive up to this point. It finally came out and was admitted that there was this agreement at the home as to the prosecution of their duties. This is the first time that he ever admitted,——

The Court: The court has ruled. Proceed.

Q. Now, Chong Hing Tenn, do you recall how many conversations you had with Hiram Fong on this partnership thing? A. Once or twice.

Q. Once or twice. Did you have a conversation with him on October 1st, at which time you instructed him to draw up partnership papers?

A. October 1st?

Q. That is the date that you had the dispute with Hung Chin Ching about his drinking?

(Testimony of Chong Hing Tenn.)

A. I don't remember if it was October 1st or not.

Q. Was it about that time, the next day, or a few days afterwards? [124]

A. Drawing the partnership? No. After. Away after that.

Mr. Lee: All right. No further questions.

(Witness excused.)

ELSIE YOUNG LUM

called as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lee:

Q. State your full name.

A. Elsie Young Lum.

Q. Are you married? A. Yes.

Q. What is your husband's name?

A. Henry Lum.

Q. Do you know the petitioner, Hung Chin Ching? A. Yes.

Q. How long have you known him?

A. Mostly for about maybe ten years. I don't know.

Q. Are you acquainted with Fook Hing Tong, Chong Hing Tenn, and Kui Hing Tenn?

A. Yes.

Q. When did you first know the Tenn brothers?

A. When they bought our business in 1940.

Q. Was that in 1941?

(Testimony of Elsie Young Lum.)

A. 1940. The latter part of 1940.

Q. I will come to the date later. At any rate, the records here show that you applied for a transfer of your liquor license on October 6, 1941?

A. It has been so long that I don't remember. Maybe it is. [125]

Q. At any rate, it would be about this date, the date that you applied for a transfer of the liquor license?

A. October.

Q. October 6, 1941?

A. Yes.

Q. About that time did you sell the place?

A. Yes.

Q. Now, Mrs. Lum, were you the former owner of the business known as the Green Mill?

A. Yes.

Q. Is that business located on Bethel Street?

A. Yes.

Q. To wit, 1111 Bethel Street?

A. Yes.

Q. How long did you own that business?

A. I think about six years.

Q. In 1941, who was running the business for you, was it you and your husband or somebody else?

A. My husband and I.

Q. About the same time in 1941, was your husband very ill?

A. Yes, he was not feeling well. He was sick.

Q. He was a sick man?

A. Yes.

Q. So you were running the business by yourself at the time?

A. Some of the time, part of the time.

Q. Did you have some help?

(Testimony of Elsie Young Lum.)

A. Most of the time, anyway.

Q. You had some help? A. Yes.

Q. Did you decide to sell your business at the time? [126] A. Yes.

Q. Did Mr. Hung Chin Ching come to see you about buying that business?

A. I think my husband was resting at home, and he wanted to talk to him about buying the business.

Mr. Waddoups: Were you there?

A. At home? I worked down at the store.

Mr. Waddoups: I move to strike that answer.

The Court: It will be stricken.

Q. Now, did you sell your business?

A. I did.

Q. Did you have any conversation,—yourself, I am talking about, not your husband,—with Hung Chin Ching or the Tenn brothers regarding the sale, who was buying this?

A. I didn't have any conversation.

Q. Most of the conversation was done by your husband? A. Yes.

Q. Now, Mrs. Lum, do you recall whether or not Hung Chin Ching or Chong Hing Tenn came over there and operated the business on a trial basis before the sale was consummated? A. Yes.

Q. Was that some time in October, 1941, or the latter part of September, 1941, or thereabouts?

A. Somewhere around there.

Q. It was understood that they would have exclusive charge of running the business there?

Mr. Waddoups: I object to this as leading, if your Honor please.

(Testimony of Elsie Young Lum.)

The Court: Sustained. [127]

Mr. Waddoups: Counsel has had great latitude on this. I suggest that he let the witnesses testify for a change.

Q. Well, did you see Mr. Hung Chin Ching, and Chong Hing Tenn come over there to operate the business?

A. When we sold the business, we have to go to the liquor commission, see. We have to have a meeting. I went out to meet with the Tenn brothers. The commissioner said yes, they would let them take over the business.

Q. Did they come over there and operate the business at all before the final sale was completed?

A. Yes, for a while, anyway, until the meeting.

Q. Yes. How long did they operate it?

A. I don't remember. It was a couple of weeks until the meeting, or something like that.

Q. Now, did you go down there yourself to help him operate the business?

A. We waited around.

Q. Did you see Hung Chin Ching there?

A. Yes, sometimes he is around.

Q. Did you see Chong Hing Tenn there?

A. Yes. He is down there.

Q. Both of them were there? A. Yes.

Q. Did you see what they did, respectively? What did they do around the place?

A. Well, they ran the business there.

Q. They ran the business. Was it both of them or just one of them?

(Testimony of Elsie Young Lum.)

A. Well, Chong Hing was there; sometimes Mr. Ching came in. [128]

Q. Mr. Chong, did you understand he handled the cash? A. Mr. Chong handled the cash.

Q. Chong Hing Tenn? A. Yes.

Q. What did Mr. Ching do?

A. I don't know.

Q. Was he around quite often during those two weeks? A. Yes. He was around.

Q. How much did the business sell for?

A. \$25,000, plus the inventory.

Q. How much was paid down?

A. I think \$15,000 was paid down.

Q. \$15,000 was paid down? A. Yes.

Q. Do you recall when that \$15,000 was paid?

A. I don't remember the date exactly.

Q. Was that paid about the time that they went in and operated the business?

A. Yes. There was a down payment until the commissioner okayed the business.

Q. In other words, they made a down payment of \$15,000? A. Yes.

Q. And the agreement would go through when the liquor commission approved the transfer of the liquor license? A. Yes.

Q. Between the time, as I get it, Mrs. Lum,—at the time that they made the down payment, the \$15,000, they were operating the business about two weeks before the liquor commission [129] approved it, is that right? A. Yes.

Q. When the deal was approved, or the transfer

(Testimony of Elsie Young Lum.)

of the liquor license was approved by the liquor commission, was the other \$10,000 paid?

A. Yes.

Q. How much was the inventory?

A. About \$10,000, I think.

Q. Did they pay that?

A. No. They had to pay it monthly. We had a note.

Q. Who did you sell the business to? Who did you think that you sold the business to?

A. Well, it was Chong brothers, all of them, I suppose, went in.

Q. Was Mr. Ching supposed to have an interest in there?

A. In the beginning there was an understanding.

Q. Well, I am talking about that time, not now.

A. Yes, he was supposed to be one of the partners

Mr. Waddoups: Just a minute. No. Go ahead. I will get it on cross-examination.

Q. Who handled the financial end of your business, was it you or your husband?

A. Well, you mean the transaction of the business?

Q. Yes.

The Court: You mean the sale of the business? Is that what you mean?

Mr. Lee: Yes.

A. We had Mr. Hiram Fong take care of our business.

(Testimony of Elsie Young Lum.)

Q. Do you recall whether there was a small deposit made first [130] to bind the deal?

A. I don't know. I don't recall.

Q. You don't recall it? A. No.

Q. You have your books, they were subpoenaed?

A. I don't have any records. Whatever records there was are down at the lawyer's office.

Q. You mean Hiram Fong's office?

A. Yes.

Q. Did you get or did you attempt to get the records from Hiram Fong's office?

A. Well, I called him last night, but he said that he gave them to Chong Hing.

Q. Chong Hing Tenn? A. Yes.

Q. You mean the personal file?

A. No. It was the sale, whatever was there.

Q. Would that file have any receipts to show when that \$15,000 was paid exactly and received?

A. I don't know. I guess so. It was made out in a check.

Q. Yes. Was it cashed when you received it, or did you hold it? A. It was in a check.

Q. Did you people hold it?

A. We held it until the commissioner okayed it; then we deposit it.

Q. Now, by the way, was business good at the time that you sold? A. Very good. [131]

Q. Why was it that you sold?

A. Well, my husband wasn't feeling well, and the doctor ordered for him to rest. We were thinking about selling.

(Testimony of Elsie Young Lum.)

Mr. Lee: No further questions.

Cross-Examination

By Mr. Waddoups:

Q. As a matter of fact, Mr. Lum, you participated in none of the details of arranging this deal, did you?

A. No. Most of the detail was arranged by my husband.

Q. It was taken care of by your husband in a conference with Mr. Fong? A. Yes.

Q. Did you ever enter into any agreement with Mr. Ching to sell or for the sale of these premises?

A. No. I haven't talked to him.

Q. You never had any conferences with him?

A. Well, he told me he was one of the partners there.

Q. Was that the only information that you had about Mr. Ching having an interest in this business? A. Yes.

Q. So that the only information that you had about Mr. Ching having an interest in this business came from Ching himself, is that correct?

A. It is so long, I don't remember.

Q. You know, don't you, that you didn't sell to Mr. Ching? A. Yes.

Q. You were aware of the fact at the time that you signed the bill of sale? [132]

A. Well, we had a lawyer, see. Mr. Fong took

(Testimony of Elsie Young Lum.)

care of all the affairs, so I didn't pay much attention to it.

Q. Was Mr. Ching in Fong's office when these things were cleared up? A. I suppose so.

Q. Have you been up in Mr. Fong's office with Mr. Ching? A. I have not.

Q. So that you don't know whether he ever got in on these conferences in Mr. Fong's office or not, is that correct? A. I don't know.

Q. You yourself never had any conferences with him in which you agreed to sell him any part of this business? A. No.

Q. Now, where did you signed these papers? Where did you sign the bill of sale?

A. I don't remember.

Q. Was that in Mr. Fong's office?

A. I suppose so.

Q. Well, I don't know. I am asking you.

A. Well, it has been so long. I don't remember.

Q. I appreciate that. We don't expect anybody to be perfect. I will call your attention to Petitioner's Exhibit C, purporting to be a bill of sale from yourself to certain parties. Will you examine that?

A. It is just a note on the inventory, isn't it?

Q. Will you read that please? You can read, can't you? A. A little bit.

Q. Is that your signature at the bottom of [133] it? A. A little bit.

Q. Is that your signature at the bottom of it?

(Testimony of Elsie Young Lum.)

A. Yes. It is, but I don't remember where I signed it.

Q. You don't remember whether it was at your home? A. No. I couldn't recall that.

Q. I call your attention to Petitioner's Exhibit F, and I ask if you recognize this document?

A. I do.

Q. That is a note, isn't it, that was given to secure the payment for the inventory?

A. Yes.

Q. This mortgage was what was given to secure the note, is that correct? A. Yes.

Q. Were you present when this was executed, do you remember? A. I guess so.

Q. Do you still have the original of this document?

A. Well, I don't know. I think so. It is so many years. We throw things away. I don't usually keep them. I throw anything away we don't want.

Q. Do you recall whether or not you kept the original of this note and mortgage, or whether or not you left it with Mr. Hiram Fong?

A. I don't remember. I really don't remember if I had it at home or left it there.

Q. In any event, as you went through the process of carrying this deal out, you left it up to Mr. Hiram Fong and followed his advice, because he was your lawyer, is that a fair statement? [134]

A. Yes.

Q. I don't know whether I asked you this or not, Mrs. Lum, but do you know whether or not

(Testimony of Elsie Young Lum.)

Mr. Ching was present at any of these conferences in Mr. Fong's office?

A. I don't remember. I don't know.

Q. On this occasion when you went to the liquor commission, was Mr. Ching along with you?

A. I don't remember. It is so long.

Q. You said the Tenn brothers, Chong Hing Tenn and Kui Hing Tenn.

A. I remember that they were there.

Q. You don't know whether Mr. Ching went along with you or not? A. No.

Q. Did you know at the time that you executed these documents that the Tenn brothers were the ones who were buying the property up there?

A. Yes.

Q. You realized at the time that Mr. Ching's name did not appear on any documents?

A. I don't know what the decision between them was.

Q. No. On the documents that you signed?

A. No.

Q. Did you realize at the time that you executed them, at the time that you signed them, that Mr. Ching's name did not appear on these papers?

A. I have not thought about it.

Q. You read it over, didn't you?

A. Yes. [135]

Q. Before signing?

A. Yes. I knew that I was signing the deal with the Tenn brothers.

(Testimony of Elsie Young Lum.)

Q. You knew that you were dealing with the Tenn brothers? A. Yes.

Redirect Examination

By Mr. Lee:

Q. What did you think about at the time that you signed, about Ching?

Mr. Waddoups: I object to what she thought about Ching as being incompetent and irrelevant. What she thought about Ching has no bearing on these respondents.

Mr. Lee: It is very important.

The Court: Objection sustained.

Q. Now, did you read that document at the time that you signed—I am talking about the time that you read the document—you read the document at the time?

A. It has been so long, most of the conversation with talking between my husband and them, you know. I really didn't bother.

Q. You don't know whether you assigned it to Ching or the Tenn brothers?

A. No. I don't recall.

Mr. Lee: No further questions.

(Witness excused.) [136]

LUM KAM HOO

called as a witness on behalf of the petitioner,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lee:

Q. What is your name, please?

A. Lum Kam Hoo.

Q. How do you spell your last name?

A. H-o-o.

Q. Were you the former owner of the business
known as the Green Mill? A. Yes.

Q. Is that the business up at Bethel street?

A. Yes.

Q. Now, do you know the petitioner Hung Chin
Ching? This man sitting here? A. Yes.

Q. How long have you known him?

A. From 1924.

Q. From 1924? A. Yes.

Q. Now, about September, 1941, did you decide
to sell your place?

A. Yes. The doctor told me to give up.

Mr. Waddoups: Well, I thought it was her
business?

The Court: It is all in the family, I guess.

Q. The business was in your wife's name?

A. My wife's name. [137]

Q. Who ran that business?

A. Me and my wife.

Q. You and your wife. Were you a sick man at
the time? A. Yes.

(Testimony of Lum Kam Hoo.)

Q. Did Mr. Ching come to see you about buying this business?

A. Yes. One day, in the afternoon, Ching come to see me to buy me out. I thought he was kidding me.

Mr. Waddoups: Will you speak a little louder please, so that I can hear you.

A. I thought Ching was kidding me. A couple of days later he bring Mr. Tong and come over.

Q. What Tong is that? Fook Hing Tong?

A. Doctor Tong come in, and he said, "We are interested."

Q. He said they were interested? A. Yes.

Q. Did you talk about the price there at the time?

A. Yes. Ching come and ask me how much. I said for the business \$25,000, that is besides the inventory.

Q. What took place next?

A. Then later, one evening they come out to the house there.

Q. Who came out to your house?

A. The whole family.

Q. Whose family?

A. Mr. Chong, Doctor Tong, and the old man come. Late.

Q. Late? A. Late in the evening.

Q. Tell the court what took place.

A. They want to find out all the details of my place. Then [138] they said they decide to buy.

(Testimony of Lum Kam Hoo.)

Ching hand check to me. He said maybe deposit, he want to buy place.

Mr. Waddoups: What was that last?

A. Ching handed check for me.

Q. You mean Ching handed you the check? He wanted to buy?

A. Yes. I told him, "Well, I do business through Hiram Fong, let him handle it, and the bookkeeper."

Q. Who is the bookkeeper?

A. Kam Tai Ching.

Q. You say let who handle it?

A. Hiram Fong.

Q. What next?

A. The next few days, give one check to Hiram Fong, I don't know, \$15,000. That time the bookkeeper and Hiram do it.

Mr. Waddoups: Speak slowly. This man has to write it down.

The Court: Talk up loud.

A. That time bookkeeper and Hiram do it.

The Court: From that time our bookkeeper and Hiram do it.

Q. After the \$15,000 was paid down, did you come down to the Green Mill?

A. Once in a while I drop in. My wife all the time handle.

Q. Did you and your wife continue to handle the business? A. Yes.

Q. Who else was in there handling the business?

A. I know afterwards Ching go there, my wife there. We promise handle two or three months.

(Testimony of Lum Kam Hoo.)

We give them a hand [139] for a while, show them how to run the business. I told my wife to go in and see Ching in the night.

Q. That is Hung Chin Ching, you saw Ching there during the night?

A. Yes. During the night.

Q. What was he doing?

A. He was manager, you know.

Q. He was managing that business there?

A. Yes. We had to take inventory, see. Anything bottle open we take. He want to take inventory on the case.

Q. You mean Hung Chin Ching?

A. So Ching, the bookkeeper, figured the inventory, and I see the bookkeeper, open bottle no count.

Q. Why opened bottle no count?

A. Because we give. Ching behind bar take inventory. So Ching tell me, "O. K.?" I said, "Forget about it, o. k." "O. K."

Q. Hung Chin Ching told you to forget about the bottles?

The Court: The opened bottles.

Q. Why did you say "O.K." on the opened bottles? Wasn't there a lot of them?

A. Yes. Some of them.

Q. Aren't they worth money? A. Oh, yes.

Q. Why did you forget about it?

A. They take the whole case.

The Court: You what?

(Testimony of Lum Kam Hoo.)

A. Take it by the case.

Q. You were good friends with Hung Chin Ching? [140] A. The whole family.

Q. Was it because you were good friends with Hung Chin Ching that you said to forget about the opened bottles.

Mr. Waddoups: We object to that.

The Court: Sustained.

Q. Why did you tell Mr. Ching to forget about the opened bottles?

A. Because it was a small thing, eh.

Q. Were you present at the liquor commission when they had the hearing for the transfer of the liquor license? A. No. I never go down.

Mr. Lee: Your witness.

. Cross-Examination

By Mr. Waddoups:

Q. Did you handle all the details in connection with this sale? A. Yes.

Q. How old are you? A. 48.

Q. Where were you born? A. Honolulu.

Q. Lived here all your life?

A. No. I went back, and came back again.

Q. When did you last come to Honolulu?

A. I came back in 1921.

Q. You were not one of the 1300? Were you one of the so-called 1300? You know what I am talking about, don't you? A. No.

Q. All right. Did you have any conferences up

(Testimony of Lum Kam Hoo.)

in Hiram [141] Fong's office? A. No.

Q. Never went to Hiram Fong's office in connection with this sale?

A. I give power of attorney with Hiram, and Hiram and my bookkeeper handle it.

Q. Your bookkeeper is dead now?

A. Yes.

Q. Did you give the power of attorney to Hiram Fong himself? A. To the bookkeeper.

Q. Did you see these papers that your wife signed before they were executed?

A. I told them to let Hiram handle the whole thing.

Q. I call your attention to Petitioner's Exhibit 1, and ask you if have seen this document before. Look it over, please?

A. I am home at the time. I never see anything.

Q. As a matter of fact, you were home most of the time that this thing was going on?

A. Yes. I let Hiram handle it.

Q. You were sick at the time. So really the only one that knows about this, from your statement of the thing, is Hiram? A. Yes.

Q. Is that correct? A. Hiram.

Q. He handled all these things? A. Yes.

Q. You authorized him to act in your [142] behalf? A. (No response.)

Q. Had you advised your wife that she should let Hiram handle it, too? A. Yes.

Q. So that everything that was done in connec-

(Testimony of Lum Kam Hoo.)

tion with this sale of this business was done through your lawyer, Hiram Fong? A. Yes.

Q. And your bookkeeper? A. Yes.

Q. Do you know who that business was sold to?

A. It was sold to Hing Tong. I believe it was the copartners that come to my house.

Q. Do you know who bought it?

A. I know there was four of them, Tong family, and Ching.

Q. Do you know—have you ever seen these papers before? A. No.

Q. So you don't know who bought this business, is that correct, of your own knowledge?

A. Well, only coming to my house and talking about it, the four of them.

Q. At the time that they came to your house to talk about it, it was your understanding that Ching was going to go into the business too, is that correct? A. Yes.

Q. So I understand that you thought that right along?

A. I don't know, Hiram handled the whole thing.

Q. Now, this check that Ching gave you, when was that [143] delivered?

A. In my house.

Q. You said that he gave you a check?

A. Yes, in my house.

Q. How big? A. A few hundred dollars.

(Testimony of Lum Kam Hoo.)

Q. How many? A. \$500 for deposit.

Q. Did you give Ching a receipt at the time?

A. No. As I say, "I couldn't give you any receipt. Let Hiram handle it." Call Hiram, but not home.

Q. So you didn't accept the check that Ching offered you at the house?

A. I told him to go to Hiram's office.

Q. Do you remember whose check it was; who signed that check?

A. I seen Doctor Tong sign the check and turn it over to Ching, he handed it to me.

Q. It was Doctor Tong's check that was offered to clinch the deal? A. Yes.

Q. You said, "I can't handle it here"; you called Hiram Fong, and he wasn't home, and nothing more was done. You let the deal go until later?

A. Yes.

Q. How many times did you see Ching, together with the Tenn brothers?

A. From the time that they move down to the restaurant? [144]

Q. But how many times did you see them in conference prior to the time that they took over the restaurant?

A. Most every day, down at the restaurant.

The Court: No. Before.

Q. Before they went into the restaurant, while you were home sick? A. I never seen them.

Q. Just one time?

(Testimony of Lum Kam Hoo.)

A. Just one time. Only talk to Ching, come down for lunch.

Q. Well, you saw them then? A. Yes.

Q. Then didn't they come up another time, the next night, or was it the same night?

A. No. Different night, about two or three days later.

Q. They came up, these three gentlemen there, and their father and Mr. Ching? A. Yes.

Q. That was the last time that you saw them at your house? A. Yes.

Q. Then the next time you saw Ching on any business was down at the Mill?

A. Yes. Only time with Tenn talk, the other time.

Q. Then you saw Ching in there once in a while at night? A. Yes.

Q. How often did you go down?

A. As soon as we leave, Ching take over with Tenn.

Q. When was this, if you recall, was this in September, 1941? A. Something like that.

Q. How long before the transfer of the liquor license, [145] if you remember when that happened?

A. I don't remember how long, a month or so.

Q. A month or so? A. Yes.

Q. After the transfer of the liquor license, after the business was sold, you didn't go there any more, is that correct?

A. No, because we give them a hand, my wife

(Testimony of Lum Kam Hoo.)

drop in by the day, and Tenn and Ching handle the license.

Q. How long a period of time did your wife drop in?

A. My wife stay in in the morning until night, in the afternoon.

Q. You were sick during this time?

A. No. I drop in, yes, almost close up time. My wife come down, and I come with her to take a ride.

Q. How many days did that go on?

A. Over two months.

Q. Over two months? A. Yes.

Q. How long a period of time elapsed between the time that you had your first conference with Ching and Doctor Tong, and the time that the business was sold?

A. About three or four months.

Q. Three or four months? A. Yes.

Q. That is the best of your recollection?

A. I met Doctor Tong and Ching.

Q. As a matter of fact, you don't know of your own knowledge [146] just when this deal was closed, is that correct? Do you understand my question?

A. The deal closed on—they handled the check from the deposit. I believe it was closed that same night.

Q. Had you transferred the liquor license?

A. After the liquor license o. k.

(Testimony of Lum Kam Hoo.)

Q. Had there been a bill of sale that night?

A. No. I told Hiram to handle it.

Q. So far as you were concerned, after that night, that was all Hiram's kuleana?

A. That's right.

Q. You just depended on Hiram to do everything?

A. Yes.

Q. The details you don't know?

A. No.

Mr. Waddoups: That's all.

Redirect Examination

By Mr. Lee:

Q. So far as you are concerned, the deal was closed that night?

A. Yes. That night.

Q. When the family came over?

A. Yes.

Q. The only thing left was for Hiram Fong and your bookkeeper to handle the details?

A. Yes.

Q. And you say, also, that you and your wife helped them during the day?

A. Yes. [147]

Q. In the operation of the business?

A. Yes.

Q. At night Ching, and Chong Hing Tenn came over there to run the business, is that right?

A. Yes.

Mr. Lee: No further questions.

Mr. Waddoups: May I ask one more question on this.

(Testimony of Lum Kam Hoo.)

Recross-Examination

By Mr. Waddoups:

Q. Has Ching made any claim against you or against your wife, to your knowledge, for failing to sign this business over to you?

A. You mean Ching, before that?

Q. No. Has he ever made a claim against you?

A. After?

Q. Afterwards?

A. The only thing I mention Ching, one time he mention about who I want to see.

Q. No. Answer the question. Has he made a claim against you for money, or for damages?

A. No.

Q. For your refusal to sign this property over to him?

Mr. Lee: That is objected to, your Honor. There is no evidence here showing that this man refused to sign the business over to Ching.

The Court: There is no evidence, except he claims there were to be four partners originally. It appears that [148] the documents only assigned it over to three.

Mr. Lee: Yes, your Honor.

The Court: Objection overruled.

Mr. Waddoups: Did he answer that question?

The Court: Yes. He said no claim for damages.

Mr. Waddoups: That's all.

Mr. Lee: That's all.

(Witness excused.)

HUNG CHIN CHING

the petitioner herein, having been first duly sworn,
testified as follows:

Direct Examination

By Mr. Lee:

Q. State your name?

A. Hung Chin Ching.

Q. Are you the petitioner in this case?

A. I am.

Q. What is your occupation?

A. Police officer, City and County of Honolulu.

Q. How long have you been connected with the
police force?

A. Going on 16 years, this year.

Q. Steady, is that correct? A. Yes.

Q. Were you born in the Hawaiian Islands?

A. Yes.

Q. An American citizen? A. Yes.

Q. Are you married? A. Yes. [149]

Q. Children? A. Yes.

Q. How many? A. One.

Q. Where do you live?

A. 2131 Dole street, Honolulu.

Q. How long have you lived there?

A. 23 years.

Q. Do you own the place there? A. Yes.

The Court: That is what they call the Chinese
Hollywood?

A. That's right.

Q. When did you purchase that place?

(Testimony of Hung Chin Ching.)

A. 1925 I built it.

Q. You built it? A. Yes.

Q. So that you owned the place that you were in, in the year 1941? A. Yes.

Q. In the month of September, 1941, approximately, did you own that property free and clear, or was there any mortgage?

A. It was not clear.

Q. How much was owing?

A. \$2,000 mortgage on the property.

Q. How much did you build that house for?

A. \$6,200.

Q. How much did you pay for the lot?

A. \$1,650 in 1925. [150]

Q. So actually it cost you about \$7,800 and something, is that correct?

A. \$1,650, plus \$4,700 for the home.

Q. Altogether \$6,350? A. Yes.

Q. Was the house furnished? A. Yes.

Q. Was the furniture paid for? In September, 1941? A. Yes.

Q. Now, were you employed in the police department in the year 1941? A. Yes.

Q. What was your rank?

A. I was sergeant of police.

Q. How long had you been sergeant of police up to September, 1941?

A. I was made sergeant of police in 1937, August.

Q. In September, 1941, how much were you making? A. About \$200.

(Testimony of Hung Chin Ching.)

Q. A month? A. Yes.

Q. Now, in September, 1941, did you know Doctor Fook Hing Tong? A. Very well.

Q. When did you first make his acquaintance?

A. I knew Doctor Tong at the Emergency Hospital. He came out there. I happened to be around there.

Q. What year was that? A. 1941. [151]

Q. 1941. A. The early part of 1941.

Q. He testified that he knew you a couple of years before that, could that be possible?

A. It could be possible, about 1940, the latter part of 1939 or 1940.

Q. You knew him, anyway, before September, 1941? A. Yes.

Q. Did you become very friendly with him?

A. Yes, very friendly with Doctor Tong.

Q. Mr. Ching, were you interested in 1941 in purchasing a liquor establishment?

A. I was interested.

Q. Did you know of the rules of the police department about police officers owning an interest in liquor establishments?

A. Yes, if we go into the liquor business, we must resign our job.

Q. Were you ready to resign your job at the time if you purchased a liquor establishment?

A. If I had purchased an establishment, I would have resigned.

Q. What did you do yourself in seeking to

(Testimony of Hung Chin Ching.)

achieve that end, going into a liquor establishment, in 1941?

A. I heard that the Pearl Inn, on north King street, right near Dillingham Boulevard was for sale. I also learned at the time, in 1941, about August, that Mr. Murakami was the owner of that establishment.

Q. Was he the person who came here this morning? [152]

A. He is the person who appeared as the first witness this morning.

Q. Proceed and tell the Court.

A. So I approached Mr. Murakami, and I asked him whether the premises was for sale, and he told me it is for sale. So I asked him what would be the price for the lease and the good will, and at first he wanted \$35,000.

Mr. Waddoups: I object to this. All this is hearsay, having nothing to do with the instant case. The fact that he has testified, and I think properly, that he went down and made an offer to buy the Pearl Inn is all right, but now what Mr. Murakami said to him, or what the terms of that proposed sale were, certainly have nothing to do with the issues before the court on this matter. This is wasting the court's time.

The Court: So far as he was interested in the purchase, I can see that, but what the terms of the deal were I don't see that has anything to do with this. Objection sustained.

(Testimony of Hung Chin Ching.)

Q. Did you complete that deal with Murakami?

A. No.

Q. Why wasn't it completed?

Mr. Waddoups: I object to that as incompetent, irrelevant and immaterial, having nothing to do with the instant case.

The Court: Sustained.

Q. Was it completed, or wasn't it completed?

A. It was not.

The Court: He said it was not. [153]

Q. Did you make any other efforts to obtain a liquor establishment?

A. One day I dropped in Doctor Tong's home. He just came down to Honolulu from Maui.

Q. What month was that?

A. The early part of September.

Q. 1941?

A. 1941. He asked me what I was doing. I told him I just almost closed a deal with the owner of a liquor establishment, that I was interested in going into the liquor business. And he told me, "You are just the right man to talk with about the liquor business." He wanted to know whether I can go around and look for a place to buy. So that evening, Doctor Tong and myself went around town. We went to the Cafe Venice first and looked at the place. It was full of customers there, very busy. We had a talk with Mr. Suganaga, and we asked him if the business was good, and he said yes. From there we went to the Riverside Grill, the same night, Doctor Tong and myself. We met

(Testimony of Hung Chin Ching.)

Mr. K. C. Wong. So we asked him whether the liquor business was worth while going into, and if there is any place for sale at the moment. He said the liquor business is good, we should go into it and devote all our attention to the business.

Q. Did he mention anything about whether or not he knew any place was for sale?

A. He told me that he believed the Green Mill was offered for sale.

Q. Was that said in the presence of Doctor Tong? [154]

A. I am sure it was said to Doctor Tong. So immediately after that we went up to the Green Mill. I introduced Dr. Tong to Mr. Lum Hoo, the witness here. We talked about business. And he offered to sell for \$30,000 at the start, not \$25,000. He wanted \$30,000, plus the inventory. Later we went back to Doctor Tong's home in Bingham Tract, in the presence of his dad, his brother, Chong Hing, and I believe his mother was there, and we discussed about going into the liquor business and purchasing the Green Mill Grill on Bethel street. The older Mr. Tong was very happy I was there. He said that I should join with the boys and get into that venture. Then we finally decided to go and see Lum Hoo at his residence on Lewalani street.

Q. You say that Doctor Tong was present at that conference at the home?

A. That's right.

(Testimony of Hung Chin Ching.)

Q. And you say that his brother——

A. Mr. Chong Hing Tenn. I don't remember that Kui was there.

Q. He testified that he was there.

A. One of the other brothers was there.

Mr. Waddoups: At this time, in order that the record may be clear, may I move to strike that portion of this narrative answer of this witness, where he mentioned that the father, the elderly father of the respondents said that he thought that the petitioner should go into a partnership venture with them. That is not binding on them. It is not evidence in this case.

Mr. Lee: I thought he said it was the [155] doctor.

The Court: No, the father. It will be stricken.

Mr. Lee: It was in the presence of the others.

The Court: In the presence of the other. That is not binding. If one of these respondents said it, it would be different.

Mr. Waddoups: Did the record show the motion was granted?

The Court: Yes.

Mr. Waddoups: I didn't hear it. Thank you.

Q. (By Mr. Lee): Was there any agreement among the brothers and you as to going into this venture, and how much capital?

A. There was an oral agreement whereby I was to put up \$3,000 and the rest of the brothers put in the rest of the capital. It also was agreed at that

(Testimony of Hung Chin Ching.)

meeting that Mr. Chong Hing be the treasurer, because they have the biggest interest in the venture. I was to manage the personnel and the projection of the business.

Q. What about your job with the police department?

A. It was also agreed that I was to quit the police department.

Q. When the deal was consummated?

A. That was the agreement, our agreement made at the time.

Q. Were you to be paid anything?

A. It was also agreed by Mr. Chong Hing that he was to get \$250, to be the manager of the finances in the business, and I was to draw a salary of \$250 in running the business, together with Mr. Chong Hing, in addition to my partnership.

Q. Was there anything said at that meeting as to whether you people were going to buy for \$30,000 or \$25,000? Anything [156] of that sort?

A. First Lum Hoo wanted \$30,000. Later on, I don't know how he came down to \$25,000, because it was agreed at the meeting at the home that Chong Hing was the treasurer, he was going to take care of all the legal business of this venture.

Q. He was to take care of the financial end?

A. The financial.

Q. Mr. Chong Hing Tenn?

A. Mr. Chong Hing Tenn.

Q. Was there anything said about when the money was to be paid in by the parties?

(Testimony of Hung Chin Ching.)

A. No. Nothing was said as to when the money was to be paid in.

Q. Was there anything said when you were supposed to put the \$3,000 in?

A. Never said anything to me as to when to put the \$3,000 in.

Q. Was it subject to Mr. Chong Hing's call?

A. At any time, subject to his call.

Q. Was that the agreement of the parties at the time? A. That was the agreement.

Q. So far as you are concerned, then, you were supposed to contribute your \$3,000 when Chong Hing notified you?

A. Whenever the papers were ready, when the business was about to be consummated.

Q. Now, you say that the next night that you people went over—— [157]

Mr. Waddoups: I would suggest that counsel let his own witness testify.

The Court: It is 12:00 o'clock. We will take a recess until 8:45 tomorrow morning.

(Whereupon the matter was adjourned until 8:45 o'clock a.m. June 23, 1948.) [157½]

June 23, 1948, 8:45 o'Clock A.M.

Mr. Lee: May the record show that the petitioners are ready to proceed.

Mr. Waddoups: We are ready to proceed for the respondents.

HUNG CHIN CHING

the petitioner herein, was recalled, and testified as follows:

Direct Examination

By Mr. Lee:

Q. Yesterday we got so far as the conference at the Tenn home. Now, to bring it up to that point, let's see if I have got it straight. When was the first meeting that you had with Mr. Lum, the proprietor of the Green Mill, was that the time that you and Doctor Tong went to see him, or did you have an earlier conference with him?

A. I had an earlier talk with him, it was about the latter part of August, or the early part of September, when I happened to drop around there for lunch, and he asked me in a joking way, he said, "Do you want to buy my business?"—meaning the Green Mill.

Mr. Waddoups: I object to anything that transpired between this petitioner and Mr. Lum in the absence of the respondents, as not being binding upon the respondents, if your Honor please. What Mr. Lum said to him is purely hearsay, or what he asked him.

The Court: I think that the fact that he con-

(Testimony of Hung Chin Ching.)

versed [158] with him with reference to the sale may stay in, not what the conversation was.

Mr. Lee: That's correct.

Q. You had an earlier conference with him?

A. Yes. He said——

Q. Never mind what he said. Counsel has objected to what he said. You had a conference concerning the sale of the Green Mill with Mr. Lum, and that was prior to your conference with Mr. Lum with Doctor Tong? A. Yes.

Q. Yesterday you told about the conference with Mr. Lum and with Doctor Tong, and then you proceeded thereafter to the conference at the Tenn home. Now, tell the court what took place at that conference.

The Court: That is at the Tenn home?

Q. At the Tenn home.

A. Yes. Yes. That evening Mr. Chong Hing, Doctor Tong, myself, the father, and I believe Kui Hing was there, too, and D. Hing, the other brother.

Q. There was another brother, D. Hing?

A. Yes, and we talked about how to purchase this business from Mr. Lum, that is, the Green Mill. And then and there we decided to form a partnership. Then we discussed the terms of the partnership. I told them at the time that the price is \$30,000. That is what Mr. Lum wanted. I told them I could only contribute \$3,000 to buy that business, they are to take care of the rest of the finances. And then Doctor Tong and his brothers,

(Testimony of Hung Chin Ching.)

they agreed to take care of the balance of the sum, that purchase price. [159]

Q. I see. Now, did you people discuss the duties on the part of the——

A. We also agreed at that meeting at the house, at the conference, that Mr. Chong Hing Tenn would be the financier, the treasurer of this partnership, because I told him that he got the most share in the business, they should take care of the cash on a salary of \$250 a month, and I am to take care of the personnel and the projection of the business, the promotion of the business, at a salary of \$250 a month.

Q. Who proposed your end of the deal? Did you propose it yourself, or was it one of the brothers? Do you recall?

A. I proposed that I be paid a salary higher than the police salary I was getting.

Q. And you were getting \$200 a month?

A. \$200 a month. Then we decided when to see Mr. Lum.

Q. I see. Just a moment before you get to that. How about the other two Tenn brothers, were they to have any duties at the Green Mill?

A. Doctor Tong said he would like to have his brother, Kui Hing, in the partnership, if there was no objection, and he was to contribute his share, whatever that is. I didn't know at the time.

Q. There was no objection to Kui Hing at the time?

(Testimony of Hung Chin Ching.)

A. No, the partnership was formed then and there.

Mr. Waddoups: If your Honor please, I will move to strike that last statement as being a conclusion of this witness, and a legal conclusion.

The Court: That would be stricken. The court would have to decide that. [160]

Mr. Lee: Yes, your Honor.

The Court: That is his idea.

Mr. Lee: His idea, that's correct.

A. The father was very happy, and he told us in the presence of—in the presence of Doctor Tong, Chong Hing and Kui Hing Tenn—

Mr. Waddoups: If your Honor please, that has been already ruled on, the question as to what he said, as to his idea.

Mr. Lee: Well, that's the father?

A. Yes.

Mr. Lee: I will have that stricken.

Q. At any rate, Mr. Ching, was Doctor Tong to spend any time in running the business?

A. If I remember correctly, he said, "I will leave it all to you fellows"—that is Chong Hing and myself to run the business. He didn't know anything about it.

Q. In other words, you and Chong Hing were to run the business, is that correct? A. Yes.

Q. Now, you said something about going to see Mr. Lum. Will you please tell the court what was done with respect to seeing Mr. Lum?

A. , We called up Mr. Lum by 'phone.

(Testimony of Hung Chin Ching.)

Q. Who called him up?

A. I called him up by telephone.

Q. Where did you call?

A. From Mr. Tenn's home. [161]

Q. Was that right after the conference?

A. Yes. We went to see him about purchasing the business.

Q. Was Mr. Lum at home when you called?

A. He was at home. He said, "Come up." They got in my car, and we went up to Mr. Lum's home.

Q. Just a minute, "they" got into your car. Who got into your car?

A. Chong Hing, Doctor Tong, his father, except Kui Hing. He didn't go.

Q. He didn't go? A. No. And myself.

Q. Did all of you go in one car?

A. In one car.

Q. In whose car? A. My car.

Q. Who drove the car? A. I drove it.

Q. Did you then proceed to Mr. Lum's home?

A. Yes. We proceeded to his home.

Q. Did you get there?

A. We got there.

Q. When you got there, what happened?

A. Mr. Lum invited us into his home. Then we sat on the sofa, and starting talking business. I think I told him the price of \$30,000 was a little bit too high, he should come down a little bit, because we have to buy the inventory, and that is a considerable amount more than we anticipated.

(Testimony of Hung Chin Ching.)

So he finally came down to \$25,000. Then Doctor Tong wanted me to give him a [162] check. I think it was \$200 as an option. Then Mr. Lum refused to take it. He said, "I prefer to have my counsel, my lawyer, Hiram Fong, take care of the legal end of the deal. Just as long as Mr. Ching"—that is myself—"is in the partnership, that is good enough for me," that I am honorable, he trust me. So the sale was made then and there at the home, of the business.

Mr. Waddoups: I move to strike that, too, your Honor, as being again a conclusion of this witness.

The Court: It will be stricken as a conclusion.

Q. Was that amount of \$25,000 agreeable to you and the Tenn brothers at the time?

A. It was agreeable at the time.

Q. Was that \$25,000 agreeable to Mr. and Mrs. Lum at the time?

A. It was agreeable; at the time it was agreeable to them.

Q. Did you people remain at the Lum home after this incident or did you leave immediately?

A. Well, we shook hands around and he offered some drinks. We had several drinks and we talked a little while. I don't know whether I should say this or not, but the old gentleman said something to Mr. Lum about——

Q. You mean after? A. After, yes.

Mr. Lee: The court has ruled anything that he said would not be admissible.

Q. Then you folks left the Lum home?

(Testimony of Hung Chin Ching.)

A. We left the place.

Q. Was there anything said, Mr. Ching, anything else said [163] concerning the business or the operation thereof?

Mr. Waddoups: By whom?

Mr. Lee: By Mr. Lum.

A. Yes. Mr. Lum said that he would be happy to let us—that is, Chong Hing Tenn and myself, and the other brother, that is, Doctor Tong and his brother, operate the business on an experimental basis for two weeks to see whether we liked it or not. If we liked it, all right, otherwise he would take the business back if we didn't want it.

Q. Now, did you and the Tenn brothers agree to Mr. Lum's offer in helping operate the Green Mill?

A. We agreed to his suggestion and invitation.

Q. Did you and Mr. Tenn—Chong Hing Tenn, thereafter proceed in the operation of the business?

A. About the middle of September we went down to the Green Mill to learn the business; Mr. Chong Hing was taking care of the cash that was coming in, and he was back of the cash register. I was on the floor, looking around the premises, meeting my friends. Once in a while when Chong Hing is away elsewhere, I go back of the cash register and take in the receipts. Then occasionally when Mr. Chong Hing is not around the meeting company would deliver meat, and the tobacconist would bring the tobacco. He would bring the bill

(Testimony of Hung Chin Ching.)

and he would tell me to pay it out of the cash register, and that was done. Then I talked to the girls. I know most of these girls there.

Q. You mean what girls?

A. The waitresses. I told them to cooperate with us, we were going to buy the business. [164]

Q. What time did you go to the Green Mill?

A. At the time I had day watch. I worked from 8:00 in the morning until 4:00.

Q. The day watch where?

A. Down in the police department. As soon as I am through with my police duties I put on my civilian clothes and go right on up to the Green Mill and work there.

Q. Now, did that arrangement work out well during the trial period?

A. Very nice. We took inventory a few nights later.

Q. Tell us about the inventory. Who was there?

A. It was after the close of business, about 11:30, I think. We closed a little early that night. The man from the Hawaii Liquor Commission was there. He has been an expert on liquor. He was advising Mr. Chong Hing. I was there. Mr. Lum was there, so was his wife, Elsie, Mrs. Lum. The bartender was there, and if I am not mistaken Kam Tai Ching was there.

Q. You mean the bookkeeper for Mr. Lum?

A. Yes. If I remember correctly, Mr. Chong Hing went down to check the cases of liquor in the warehouse down in the basement and I helped take

(Testimony of Hung Chin Ching.)

inventory back of the bar on these loose bottles. Kam Tai Ching was tabulating. Then there was lots of partially filled bottles, some almost to the top, some half, some a quarter filled. There was a considerable number of these bottles back of the bar and on the shelves. Later on Mr. Chong Hing came up and asked Mr. Lum whether he was going to include that in the inventory. There was a little haggling on whether they should be included or not. I told Mr. Lum it is a small thing, to forget about it. After [165] all, we are spending a lot of money buying this business. So he finally consented not to include these partially filled bottles.

Q. Mr. Chong Hing Tenn testified about October 1, about the first day, that you were doing a lot of heavy drinking at the Green Mill, and he stated that was no way to make the venture a success, have you anything to say about that?

A. I would say it was an untruth, for the simple reason I was on the floor most of the time, people coming in and I invite them to have a drink, for the business. Once his dad comes around and waits outside. I figured that he has got some consideration, too, and I invite him in and pour him a drink; maybe I have a drink with him. But I never got drunk or intoxicated in the establishment.

Q. Did you have trouble then with Chong Hing concerning the operation of the business?

A. Well, I didn't have any trouble directly with him. In other words, I didn't go up to him and complain. During the latter part of September,

(Testimony of Hung Chin Ching.)

while we were practicing or learning, these couple of waitresses come up to me and told me——

Mr. Waddoups: Just a minute. I object to what any waitresses told him as being hearsay.

The Court: You had a conversation with a couple of waitresses. That is as far as you can go.

Q. What were those conversations? What were they, good things, or were they complaints about anything?

Mr. Waddoups: I object to that as calling for hearsay.

The Court: Objection sustained. He has a conversation. [166] What he does as a result of it is a different thing.

Q. You had a conversation with a couple of waitresses? A. That's right.

Q. As a result of this conversation with a couple of the waitresses, what did you do, if anything?

A. That night, when I went home I wrote a letter to Doctor Tong, and in the letter stating that Mr. Chong Hing is not doing the right thing. He is interfering with my duties as a man who was in charge of personnel, butting in, telling the waitresses what to do. They don't like it. I would like him to inform the brother to abide by his agreement made at the conference at the house as to the partners.

Q. So you wrote that letter?

A. I wrote the letter.

Q. Did you receive a letter back from Doctor Tong, Petitioner's Exhibit A?

(Testimony of Hung Chin Ching.)

A. And I received a letter from him.

Q. Is this it?

A. This is the letter I received from Doctor Tong. There was my letter attached to it.

Q. You received this petitioner's Exhibit A?

A. Yes.

Q. You also received with that Petitioner's Exhibit A, this thing, did you?

A. Yes, I did. It was attached, stapled to the other letter.

Q. This is Petitioner's Exhibit A-1?

A. Yes.

Q. Now, that letter is dated October 6, [167] 1941? A. October 6.

Q. Approximately when did you receive that letter?

A. I couldn't tell you now. It was delivered to the YMCA.

Q. Do you recall whether there was any air mail service at the time?

A. There was air mail service.

Q. Was this air mail? Let me show you this envelope. Was this by regular mail?

A. A three cent stamp. It must be by regular mail.

Q. After you received this letter from Doctor Tong, how did you feel?

A. Fine. It was very good. But when I went back to work there was a certain chilliness shown me by Mr. Chong Hing. He tried to avoid me; wouldn't talk.

(Testimony of Hung Chin Ching.)

Q. Now, you kept on with your duties, did you not? A. I did.

Q. Will you tell the court what happened next?

A. Well, I continued to work there. I proceeded to the Green Mill when my tour of duty was over at 4:00 o'clock, at the same job, meeting people, introducing them to the new owner, the new partners, new business.

Q. You mean Chong Hing?

A. Yes. He was the only one down there. Mr. Lum was there. But she used to run the place. And he told me, "You see these folks there? That is the crew of the US Chicago, destroyer, these are my good friends. They use this place as a club."

Mr. Waddoups: I object to this, anything that Lum told him being incompetent, irrelevant and immaterial and hearsay. [168]

The Court: Objection sustained to anything with reference to the USS Chicago.

Q. Those two weeks went by. What happened next?

A. About the 20th of October—I think about the 20th—I happened to be walking on Merchant Street, and I saw Hiram Fong's sign up there, and I thought I would drop up and see what the progress was made in the drawing up of the partnership papers. I met Hiram in the office, and I said, "Hello, Hiram, how is the papers getting along?" He said, "You are out. You are not in the partnership, according to the instructions I have." So I said, "Let me use that 'phone of yours, I want to

(Testimony of Hung Chin Ching.)

call Doctor Tong.” I called him up right away, in fact, I just remembered that yesterday, somebody reminded me, that I still owe that bill. I called Doctor Tong and I said, “What is it you folks are up to, anyway?” He asked me to come up and see him.

Q. Who asked you to go up?

A. Doctor Tong, over the radiophone. So I got hold of my lieutenant, and I said, “I have got something very important, I want to get off an extra day to go to Maui. I remember there was the first DC3 passenger flight ever made to Maui. The doctor met me at the wharf and took me to the house. Then later on Will Centio came around, a fellow officer, I mean, who was on vacation up there at the time. I told Doctor Tong that is not the right thing to do. Prior to that—may I just go back?

Q. Go ahead.

A. When I heard of this ouster of me from the partnership, I got hold of Lum, too. I called him up after I talked with Doctor Tong. [169]

Q. Who do you mean?

A. The owner. I said, “I want to see you, Long John.” Before I saw him, I went to see Doctor Pang.

Mr. Waddoups: I object to anything that was said to Doctor Pang.

The Court: Objection sustained.

Mr. Waddoups: Not binding on the respondents.

(Testimony of Hung Chin Ching.)

Q. So you went to see Doctor Pang, anyway. After you saw Doctor Pang, what did you do?

A. I went to see Long John, and I said——

Mr. Waddoups: I object to anything that was said to Long John, not being binding on the respondents. There is no evidence anyone of them was there. Purely a self-serving declaration, if your Honor please.

The Court: Well, he has testified as to what he said to Long John, and his reaction. Objection overruled. Long John being present at the time, and the person from whom it was purchased, in the purchase that they all negotiated according to this testimony, on the sale of these premises.

Q. You went to see Long John?

A. I went to see Long John. I asked him, "Say, have you seen the papers from the sale?" He said, "Aren't you in it?" I said, "No. They put me out." He said, "It's too late now, they have already signed the bill of sale." I went up to Maui, anyway, to see Doctor Tong. Doctor Tong told me this, he said, "Forget about it, Ching. Later on when I get something, or an enterprise, you come in with me."

Q. Did that satisfy you?

A. No. That didn't satisfy me. So, we had a few drinks. [170] He took me to Lahaina and I came back that night. He was very nice. He wanted me to stay that night at the house. I didn't want to. I wanted to come back. That same night Centio and I got passage and come back to Honolulu.

(Testimony of Hung Chin Ching.)

After I came back, I was so doggoned mad—excuse the language, please—I was just very mad over the whole situation. I went back there a couple of days.

Q. Where did you go back?

A. I went back to the Green Mill a couple of days.

Q. You mean that you continued your work?

A. Yes, then finally it dawned on me, what's the use? My brother Hung Wai Ching called me——

Mr. Waddoups: I object to what Hung Wai Ching said.

Mr. Lee: I will ask that be stricken, also.

The Court: It will be stricken.

Q. At any rate, you received a call from Hung Wai Ching? A. Yes.

Q. As a result of that call, what happened?

A. Well, I was upset. I didn't feel right. I was ridiculed by people.

Q. Did that have anything to do with this exhibit here, showing the publication of the sale of the business to Kui Hing, Fook Hing Tong and Chong Hing Tenn?

A. He called attention to the publication of the partners, and he said, "Your name isn't in it. What's the matter?"

Mr. Lee: That's all right. Leave out that portion. That will be stricken—concerning the notice.

A. There was some kind of notice of partnership published [171] in the paper.

(Testimony of Hung Chin Ching.)

Q. And that your name wasn't in it, is that correct? A. That's right.

Q. After that did you then leave the Green Mill?

A. I figured what's the use, if they are going to treat me like that, I am going to let their conscience be their guide. That is the way I felt. They are good friends of mine, honorable gentlemen. Why should they do a thing like that to me? I don't like to go to court.

Q. In the testimony of Chong Hing Tenn, particularly, he stated that they were waiting for the money from you. Now, what was the understanding?

A. It was agreed that he was supposed to notify me when the tender is ready.

Q. Who?

A. Chong Hing Tenn, the man in charge of the finances. He was in charge of finances.

Q. He was supposed to let you know.

A. Let me know when the thing was about to be consummated.

Q. Then for you to put up the money, is that it?

A. That's right.

Q. When was that plan agreed to, about?

A. At the first conference at the house.

Q. At the Tenn house? A. That's right.

Q. Did Chong Hing Tenn ever ask you for that money? A. He never asked me for the money.

Q. Did you at all times have that money available? A. Yes. [172]

(Testimony of Hung Chin Ching.)

Q. Where was that money? How was that to be raised?

A. I was going to mortgage my house on a second mortgage for \$1,000, and borrow \$2,000 from K. C. Wong.

Q. Was K. C. Wong going to let you have it without security? A. Yes.

Q. Without security? A. That's right.

Q. Was that true what Mr. Wong said yesterday, or the other day that he loaned you \$75 to go up to Maui to see Doctor Tong?

A. I borrowed \$75 from him.

Q. Was that without security?

A. No security. He give it to me.

Q. Where were you going to get the loan of \$1,000 on a second mortgage?

A. I was going to get a second mortgage from my brother Hung Wai Ching.

Q. He is a realtor? A. He is a realtor.

Q. Had he agreed to let you have \$1,000 any time? Did he have that money? A. He had.

Q. When did you go to Maui to see Doctor Tong? A. I am pretty sure on the 20th.

Q. How do you happen to fix that date at this time?

A. I just checked my—checked the chart time at the police department, Centio's time and my time.

Mr. Waddoups: I object to this, your Honor, the chart is the best evidence. No showing why it

(Testimony of Hung Chin Ching.)

is not produced. [173] I will object to his giving us something without the privilege of seeing it ourselves and examining it.

The Court: Objection overruled. He is just saying where he got his information. If you want to check the chart you can ask him to produce it.

Q. From the checking of the chart, do you recall October 20?

A. At the time I went up there, either the 20th or the 21st. Either one of those dates.

Q. Do you recall while you were sitting here Doctor Tong testified that you arrived there when the fair was going on?

A. I believe the doctor was mistaken on that, because the fair wasn't on when I was there. That was the first flight of the DC 3. I check on that. They have got the report on that.

Q. Do you remember it as being one of the first flights?

A. The first commercial flight to Maui in the DC 3s for paying passengers. Previous to that they had a trip for editors, reporters, and big shots.

Q. Was that the same day?

A. No. That was a few days ahead.

Q. You say when you arrived there, there was no fair?

A. I don't know that there was a fair.

Q. Was there a fair previously?

A. There might have been. I don't recall.

Q. During this trial period, Mr. Ching, did you notice whether the Green Mill was making money,

(Testimony of Hung Chin Ching.)

or was it such that you—were you people glad that you were going into [174] that business?

A. It was making money. I went out just to—Mr. Chong never let me read the total amount, the take every day. I wanted to take a look at that and read it. He wouldn't let me take a look at it.

Q. How was the business? A. Good.

Q. Well, explain what you mean by good.

A. Average about \$600 a day.

Q. How do you know that, if you didn't look?

A. We talk about it. He tells me how much, but he would not let me look at the end of the day's business.

Q. Were there a lot of people there all the time? A. Lots of people there.

Q. Were you or were you not happy?

A. Very happy.

Q. That you were one of the partners?

A. Yes, I thought I would quit the police department after so many years, and take it easy, put in a little work.

Q. By the way, have you ever been paid a dime for anything?

A. One bottle of whiskey, partially filled, one time. I asked Mr. Chong Hing, how about taking a half empty bottle of Scotch. He said, "Go ahead, take it."

Q. Was that during the trial period?

A. Yes. Then one time, I think it was Christmas, he sent me a bottle of whiskey.

(Testimony of Hung Chin Ching.)

Mr. Lee: Your witness.

Mr. Waddoups: No questions. [175]

(Witness excused.)

Mr. Lee: May we have a short recess at this time?

The Court: Yes.

(Recess.)

Mr. Lee: Your Honor, there is a procedural matter that occurred to us during the recess, that is, in the demurrer files by counsel for the respondent on the question of laches. There is a pleading. I think it was overruled. Now, it is our understanding that that is a question of defense. I would like to know, possibly, whether my understanding is correct as to the law on the procedural matter.

Mr. Waddoups: It seems to me, if your Honor please, it is up to counsel to try his own case.

Mr. Lee: We are prepared to proceed on that. We believe that it should be raised as a matter of defense.

The Court: Well, of course, all the court can go on is that we are in the middle of a case right now, and this court can only decide the case on the evidence that is presented. Now, the thing for you to decide is as to whether or not you decide to rest on the evidence that you produced, or whether you want to go forward. I certainly cannot decide a moot question. There is no question raised here as yet. I notice in one of these de-

murrers there had been set up the defense, or something said about laches. I don't know which demurrer it was in.

Mr. Lee: In practically all the demurrers, your Honor.

The Court: It seems to me that there are two findings in here.

Mr. Lee: There is also this question of getting [176] into the accounting business. As I understand the court's ruling on one of counsel's objections to the matter of the amount of business done during the years 1942, 1943 and 1944, from then on was steady, until the partnership had been approved. Now, I would like to have an opportunity to ask for an accounting, which we have asked for in addition.

The Court: Well, the court is in this position: You gentlemen can proceed with proving your case in any way that you see fit. This court is not going to be put into the position of directing the method of trial. The court is sitting to rule upon what is presented, not to tell counsel what to prove.

Mr. Lee: Mr. Ching, will you take the stand again, please?

HUNG CHIN CHING

the petitioner herein, was recalled, and testified as follows:

Direct Examination

By Mr. Lee:

Q. Mr. Ching, after you left the Green Mill——

(Testimony of Hung Chin Ching.)

Mr. Waddoups: There has been no cross-examination, your Honor.

The Court: Well, as I understand it he is recalling him on direct.

Mr. Waddoups: There has been no cross, you will recall.

Mr. Lee: Yes.

Mr. Waddoups: All right. No objection.

Q. Why didn't you immediately bring an action against the Tenn Brothers after you left the employ? [177]

A. I felt at the time that Doctor Tong would do the right thing by me.

Q. You mean in respect to the Green Mill?

A. I had confidence in him that he would do the right thing by me.

Q. Well, now, when did you see a lawyer about this case?

A. Toward—about the end or the latter part of 1943, I believe I saw you, Mr. Lee.

Q. The records shows that the suit was filed about 1944, the early part of 1944, if I recall.

The Court: According to the petition here, the bill was filed on April 5, 1944.

Q. Why didn't you see an attorney during the years 1942 and 1943?

A. As I said, I had confidence in the doctor, he will do the right thing by me. I waited. Nothing was done. The war came along, and we had extra duties to perform.

(Testimony of Hung Chin Ching.)

Q. As a police officer?

A. As a police officer. Just one of those things that lasted from one day to the other. I just put it off, figuring he would come through and stand by me in that Green Mill business.

Q. Do you recall whether or not during those years we had martial law, also?

A. Yes. We had martial law.

Q. Did that affect your decision in any way about filing suit?

A. At the time I figured I couldn't sue, anyway. [178] We had these military courts, and there was nothing I could do about it. That is my opinion at the time, there is no use suing. The military had control of the courts. It was my understanding at the time that you could not bring any suit against anybody.

Q. Now, you say that you thought Doctor Tong would do what is right by you in the Green Mill?

A. That's right.

Q. So Doctor Tong—did Doctor Tong indicate in any way that he would, during that time?

A. Nothing concrete.

Q. Pardon?

A. Nothing concrete was done by him.

Q. Did he give you that impression that he would?

A. Yes.

Mr. Lee: Your witness.

(Testimony of Hung Chin Ching.)

Cross-Examination

By Mr. Waddoups:

Q. After your conference on Maui, how many times did you see Doctor Tong again, between that conference time and the time that you filed the suit? A. How many times? Many times.

Q. Where? A. At his home.

Q. Here? A. In Honolulu.

Q. You called on him personally?

A. Yes. [179]

Q. When did you decide that the military courts were over and that you had a right to come into civil court?

A. I don't recall the year now. I couldn't say that definitely when. I couldn't tell you that.

Q. Was it 1942?

A. Anyway, I decided about the latter part of 1943 to see the counselor.

Q. And you consulted Mr. Lee in the latter part of 1943?

A. Yes. I think it was around about October or November some time—either one of those months.

Q. You filed the suit in April, 1944?

A. I didn't recall the date.

Q. Now, before you filed the suit, did you make any written demand upon Doctor Tong, or any of the partners in the Green Mill?

A. I believe my counsel did. He wrote them a letter.

(Testimony of Hung Chin Ching.)

Q. Do you know whether he did or not?

A. I have a copy home.

Q. When was that?

A. I think about January 6, 1944, if I am not mistaken.

Q. You had seen your attorney in November?

A. Yes.

Q. You have stated that you knew Centio?

A. Yes.

Q. Did he go up to Maui with you?

A. No. We came back together.

Q. He was there when you arrived, is that so?

A. Yes.

Q. Do you know whether he went up for the state fair? [180]

A. He was on his vacation. I don't know whether it was for the fair. I know it was for vacation—annual vacation.

Q. Mr. Ching, do you remember making a statement to Mr. Centio on the boat, coming back, to the effect—to this general effect—"I came to Maui for nothing"?

A. I don't remember that, Mr. Waddoups.

Q. Do you deny making such a statement?

A. I deny it.

Q. You deny it? A. Yes.

Q. Shortly after the war started, you might say a little after the war started, the bars were closed?

A. Yes.

Q. They were closed for a considerable time?

(Testimony of Hung Chin Ching.)

A. Four or five months, I believe.

Q. During that period of time, of necessity all business houses that dealt in liquors lost a very great source of their revenue?

A. Yes—that is, sales.

Q. That fact held true with the Green Mill?

A. Yes.

Q. You were aware of the fact at that time?

A. Yes, I was.

Q. Do you know a fellow by the name of Pai?

A. A very good friend of mine. I know him.
A friend of Doctor Tong and myself.

Q. He conducts a place known as the Mint?

A. Yes. On Beretania Street.

Q. Do you recall any time ever making a statement to Arthur Pai to this effect: [181] “I didn’t put any money in the Green Mill; they are losing money”?

A. I never made such a statement. I told Lum I would like to buy that business, even though it was wartime.

Q. You deny making such a statement?

A. Absolutely, I deny it.

Q. Shortly after the war started?

A. I never made such a statement.

Q. Now, during the time that you were operating up there, working with Mr. Chong, was it your impression that you had an interest in that business?

A. Absolutely.

Q. Did you resign from the police department?

A. The agreement was——

(Testimony of Hung Chin Ching.)

Q. Answer the question.

A. I didn't resign, but——

Q. No. Answer the question.

A. I didn't resign at the time.

Q. All right.

Mr. Lee: If your Honor please, he has a right to explain why.

The Court: Yes.

Mr. Waddoups: You can bring it out on redirect examination, Mr. Lee.

Mr. Lee: Thank you, Mr. Waddoups.

Q. During this time when you say that Mr. Chong would not let you look at the cash register, was that during the period of the trial run—the so-called trial run? [182]

A. It was during the trial run after October 1, when I wanted to take a peek at it, he would make it so that I could not see it.

Q. During the trial run that the money was not considered to be Tenns'——

A. At the time——

Q. Let me finish the question—(Continuing)—and the profits at the time were still going to Lum, pending the clearance of the liquor license?

A. To my understanding it went into the new business.

Q. When you talk about \$600 a day, is that referring to gross or net? A. Gross.

Q. Because you are not familiar with the overhead and costs, you would not know what the net was? A. No.

(Testimony of Hung Chin Ching.)

Q. Is that a fair statement? A. Yes.

Q. So that \$600 figure was the gross figure?

A. Gross sales.

Q. Do you recall any conference with Claude Malini and Mr. Thompson, the gentleman who testified here yesterday? A. I talked with them.

Q. With Mr. Chong Hing Tenn?

A. No. You mean at the commission's office?

Q. Anywhere.

A. No. Not concerning the Green Mill.

Q. You never had a conference with them concerning the Green Mill? [183]

A. I have talked to Mr. Thompson and Mr. Malini outside, not in the presence of this gentleman here.

Q. You did discuss your position in the Green Mill with them?

A. Yes. I told them I got a big double cross.

Q. Did you discuss your position in the Green Mill with them after the license had been changed, or before, or both?

A. One time I went to see Mr. Malini and kind of argued——

Q. Never mind. Just tell me what I am interested in, when you saw them.

A. I don't recall that.

Q. Do you recall whether or not you saw them prior to October 10, 1941?

A. No. I don't remember.

Q. Prior to the time that the change or the application had been granted?

(Testimony of Hung Chin Ching.)

A. No. I wasn't up there at all. That is Mr. Chong Hing's business.

Q. Did you see them down at the place of business, or anywhere? A. No. I don't remember.

Q. Did you follow up at all on the transfer of the liquor license? A. No.

Q. You didn't do anything about it?

A. No.

Q. I call your attention to a letter written to you and signed "Bear," which is identified as Petitioner's Exhibit [184] A, and I will call your attention particularly to a part of the second paragraph, where it says, "I have 15 shares and you have three, that is if you can get the dong by then." What is meant by that expression?

A. He meant by getting the money.

Q. After you received this letter, did you produce any money?

A. I was waiting for Mr. Chong Hing to ask for that money.

Q. You didn't go and say, "When do you want it," or anything, you waited for them to call you?

A. I was waiting for the consummation of the deal.

Q. At the time when you received this letter, had you completed your loan so that you could get the necessary \$3,000?

A. I had already made all arrangements, merely signing the check.

Q. Your financial situation, personally, so far as ready cash was concerned at the time, was fairly

(Testimony of Hung Chin Ching.)

precarious? A. Well, I had very little cash.

Q. As a matter of fact, you testified here that you never got anything from the Green Mill, except a little bottle of whiskey? A. That's right.

Q. Do you recall giving them a \$50 check that bounced? A. That's right.

Q. They didn't do anything about it?

A. No. That was Long John. Nothing to do with the Green Mill.

Q. That was about this same time?

A. No. It was prior to that. It was in September. [185]

Q. Well, I mean, it was in general about the time?

A. It was long after when he told me about it. I had an account down at the Liberty Bank.

Q. Now, do you recall the date that you went to Mr. Fong's office and made a telephone call to Maui?

A. That was about the 20th or the 21st.

Q. Had you ever been to Mr. Fong's office before that? A. Never did.

Q. Had you ever talked to Mr. Fong about this deal? A. No, sir.

Q. You knew, during the process, that Mr. Fong was handling all the matters pertaining to the consummation of this sale of the Green Mill?

A. That's right.

Q. Did you ever ask to see any papers that were being drawn in connection with it of Mr. Fong?

A. I never did.

(Testimony of Hung Chin Ching.)

Q. Did Mr. Fong ever show you any papers being drawn, or that had been drawn in connection with it? A. No. I never asked him.

Q. On this occasion that you testified about, where Mr. Fong, according to your testimony, said, "You are out," or words to that effect, did you ask at that time to see the partnership papers?

A. I didn't ask. I was so upset, I immediately got on the 'phone and got hold of Doctor Tong.

Q. After you talked to Doctor Tong and Mr. Fong talked to Doctor Fong—he talked, did he not, on that same 'phone [186] call?

A. I don't remember. I think I did all the talking. I used the 'phone myself.

Q. Mr. Ching, what were the hours down there during this period when you were there?

A. You mean at the Green Mill? A little after 4:00 o'clock to 11:00.

Q. Did you have a regular beat?

A. A regular beat?

Q. I mean an unchangeable one?

A. I was in the office. I was dispatch sergeant.

Q. I see. So you had regular hours down there?

A. Yes.

Q. And those hours were from what, 8:00 to 4:00?

A. 8:00 to 4:00. We changed every three months at the time.

Q. When you completed your work there you would change into civilian clothes, would you?

(Testimony of Hung Chin Ching.)

A. That's right.

Q. And come up to the Green Mill?

A. That's right.

Q. Did you have your meals there?

A. No. Very seldom I had eaten there.

Q. How late would you work there?

A. 11:30 to 12:00 o'clock.

Q. During the period when the Green Mill bar was closed, did you have occasion to go up there at all?

A. After the bar closed? [187]

Q. During the period right after the war, when all the bars were closed up?

A. No. I never been there. I passed by there. It was always closed.

Q. During that period, just after the war started, during the time that the bars were closed, did you make any demands upon any of the three partners of the Green Mill?

A. No. I didn't make any demands.

Q. When did you make your first demand upon them?

A. When I saw my counsel, Mr. Lee.

Q. So that the first demand that was made upon them was, to the best of your recollection, January 6, or thereabouts, 1944?

A. Yes. That's correct.

Mr. Waddoups: I think that's all at this time, if your Honor please.

The Court: Redirect examination?

(Testimony of Hung Chin Ching.)

Mr. Lee: No questions.

(Witness excused.)

Mr. Lee: If your Honor please, yesterday I asked for some receipts—bank statements.

Mr. Waddoups: Just a minute. Do you have any objection to my asking him a couple more questions?

Mr. Lee: No.

HUNG CHIN CHING

the petitioner, was recalled and testified as follows:

Cross-Examination

By Mr. Waddoups:

Q. Mr. Ching, as a part of this overall agreement that [188] you testified that you were to be a part of, was there a lease involved?

A. You mean for the premises?

Q. Yes.

A. I think that the place was leased.

Q. I mean was there a lease—was the deal—whoever was to buy it from Lum, one that contemplated getting an assignment of a lease?

A. I think there was a lease. I understand that there was a lease. Lum leased from somebody else, and he was just to lease it to us.

Q. Was it your understanding that you were to be included as one of the assignees in the assignment of the lease? A. That was the agreement.

Q. Did you have any written agreement with

(Testimony of Hung Chin Ching.)

Lum, or with the respondents, relative to the acquiring of this lease? A. No, sir.

Mr. Waddoups: That's all.

Mr. Lee: That's all. No questions.

(Witness excused.)

WALLACE AOKI

called as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lee:

Q. What is your name, please?

A. Wallace Aoki.

Q. What is your occupation?

A. Cashier or bookkeeper at the Hawaii Meat Market. [189]

Q. Do you know the Tenn brothers?

A. Yes. I do.

Q. Did you ever keep their books at the Green Mill? A. Yes, I did.

Q. When did you start keeping their books at the Green Mill?

A. Actually started keeping them, I would say, about June or July, 1942.

Q. 1942? A. Yes.

Mr. Waddoups: Well, we are willing to stipulate with counsel that it would be more convenient to the court, and better procedure for the mechanics of the accounting, that evidence concerning the

(Testimony of Wallace Aoki.)

actual accounts be continued until such time as the court has determined the preliminary question as to whether or not an accounting should be had. I think that is proper. There would be no point in putting in evidence, wasting the court's time, unless the court first determined that the relief prayed for should be had. I think that is the usual procedure.

The Court: The question on the evidence on the accounting need not be put in at this time.

Mr. Waddoups: In the event that the accounting is ordered, then it would be up to the respondents to make an accounting.

Mr. Lee: If the court ordered the relief prayed for, it would be the respondents' duty to do that.

The Court: This other situation is on [190] another phase, but nothing to do with the accounting?

Mr. Lee: No. That's right. I brought it up at the time——

The Court: All right. This man may be withdrawn without prejudice to recalling him, if necessary, on the phase of the accounting.

Mr. Lee: Thank you, Mr. Aoki.

(Witness excused.)

Mr. Lee: We rest, your Honor.

Mr. Waddoups: We would ask for a brief recess.

(Recess.)

Mr. Waddoups: If the court please, we move to dismiss the amended bill, and any bills which were

incorporated by reference in it, and that the respondents may go hence with their costs.

This motion is based on several grounds. The first is that there has not been given to the court that type of action which is contemplated in an equity court, or in equity jurisprudence. We maintain that the evidence has disclosed a situation which required the petitioner to pursue any remedy, if he had one, in a court of law, and not in a court of equity. What has been proven to the court is not a partnership, nor a joint venture, but at best, taking the evidence in its most favorable light to the petitioner, there has been proven an agreement to enter into a joint venture which agreement was never consummated. The evidence is that the parties to this proceeding met, that there was a discussion, that Mr. Ching was to have \$3,000 in an investment [192] in what turned out to be a \$35,000 investment, that being the purchase price of \$25,000, plus the inventory of \$10,045. He was to handle the personnel, and Mr. Chong Hing was to handle the financial matters in connection with the Green Mill. A very significant factor in determining whether there was actually a joint venture formed, in which the petitioner acquired an interest, is two-fold. The court will recall that in the report of the liquor commission, or the report submitted to the liquor commission of Malini and Thompson, they stated to the liquor commission that Mr. Tenn was going to have the license, and that he would have as his assistant, Mr. Ching, the petitioner. That is one element to consider. They got that information some place.

That was the impression that they got then on the ground. There is a further and more important consideration, it seems to me in determining whether or not Ching honestly, in his heart at the time, felt that he had actually entered into a joint venture with these respondents, and that is that he did not resign his position at the police department. Had he for a minute felt as he would lead this court to believe when he went down in the early stages of this affair, that he actually was a partner, or that he actually had a share, certainly, if he is an honorable person that would seek the aid of a court of equity, he would then have resigned. The obvious, perfectly answer is that no agreement was ever consummated. Add to this, your Honor, the very significant fact that he never at any time produced one cent toward the purchase of this business. He never at any time inquired as to "when shall I put up the money?" Right in the face of this [193] letter which he received from Doctor Tong, with whom he had had his principal dealings, saying he was to have three shares if he got the "dong" by that time.

The Court: The court understands that they had no dong. It means money from another source.

Mr. Waddoups: Yes, that's right. There we have at best, if your Honor please, a verbal agreement, under the terms of which these people were looking to an ultimate agreement which was never consummated. Now, if there was a breach of that verbal contract, his action at that time was an action at law for damages for breach of contract.

We have the further fact, if your Honor please, that this petitioner has not come before this court, as a chancellor required, with clean hands, because he is unquestionably, in our opinion, guilty of laches in the premises. We have a situation here where he says that he thought that he had an interest in the business. The war comes along. He has done nothing about it. He says he thought Doctor Tong would take care of him. Doctor Tong's testimony, put on by the petitioner himself—although it was granted, it was as an adverse witness—is that he advised Ching before the execution of their partnership agreement that he was out, that he had not produced the money, and that that was the end of it. Ching knew that they were in business there. He was around from time to time. He knew that they were in business from October, 1941, all the way into April, 1944. Now, the crux of the matter was very properly stated by Judge Cristy in overruling one of the demurrers—I mean in sustaining one of the demurrers on the ground of laches. Judge Cristy, and I quote from [194] the record of this court—

Mr. Lee: If your Honor please, I object to the reading of the statement—it is part of the record here—but in his argument on this matter. The thing that is before the court is the last bill of complaint—

Mr. Waddoups: Well, it is before the court. I want to read it. It is part of my argument.

The Court: Here is the situation. It is part of the record of this case. Of course, the court can take judicial notice of the record of its own proceed-

ings. What Judge Cristy says is not binding upon this court. I am thinking differently from Judge Cristy.

(Argument by counsel.)

(Response by petitioner's counsel.)

The Court: This being a motion to dismiss, which is in the nature of a claim that there is no proof to substantiate the allegations of the petitioner, and therefore the petitioner is not entitled to any relief at this time, the court in this situation, the same as in the demurrer, has to look on the evidence in its best light. With that end in view, this court at this time will overrule the motion to dismiss.

Mr. Lee: Yes.

Mr. Waddoups: Very well, your Honor. I assume that we will resume tomorrow?

The Court: The court will reconvene at 8:45 tomorrow morning.

(Whereupon an adjournment was taken in this case to Thursday, June 24, 1948, at 8:45 o'clock a.m.) [195]

June 24, 1948, 8:45 o'Clock A.M. Session

Mr. Lee: Ready, your Honor.

Mr. Waddoups: Ready to proceed, your Honor. I will call Mr. Fong.

HIRAM FONG

called as a witness on behalf of the respondents,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Waddoups:

Q. State your name, please.

A. Hiram L. Fong, attorney licensed to practice
in all the courts of the Territory of Hawaii.

Q. Mr. Fong, do you know Doctor Tong?

A. I do.

Q. Do you know Chong Hing Tenn?

A. I do.

Q. Do you know Kui Hing Tenn?

A. I do.

Q. Do you know Mr. Ching, Sergeant Ching, who
sits with his counsel at the counsel table?

A. Yes.

Q. Do you you know Elsie Lum?

A. Yes. I know her.

Q. During October, 1941, were you acting as her
attorney? A. I was.

Q. In that connection did you have occasion to
do any legal work in connection with the premises
known as the Green Mill? A. Yes. [196]

Q. I will call your attention to Respondent's
Exhibit I, and ask you to examine that document.

A. This document is an agreement of copartner-
ship, dated October 14, 1941, between Fook Hing
Tong, Chong Hing Tenn, and Kui Hing Tenn.

Q. Was that prepared in your office?

(Testimony of Hiram Fong.)

A. Prepared in our office, notarized by my notary, Eleanor Young Lum.

Q. Mr. Fong, do you recall the circumstances concerning the preparation by you of that document?

A. Yes, I do. I remember the principal points, but not the details.

Q. Prior to the execution of that document, did Sergeant Ching come into the office?

A. Mr. Ching had been in my office two or three times, maybe more.

Q. Prior to the preparation of that document?

A. Yes.

Q. On one occasion did he make a 'phone call to the Island of Maui?

A. He did, in my office.

Q. Will you tell the court the circumstances surrounding that 'phone call? Let me put it this way: Who did he call, do you know?

A. He called Doctor Tong who was then in Maui, as captain in the medical corps, National Guard.

Q. Do you recall anything that was said by Ching at the time on the 'phone?

A. I couldn't swear, but I believe it was a question as to [197] whether Mr. Ching was going to be a partner, but I couldn't swear to that. It is so long ago, seven years now.

Q. Well, did you on that occasion, at that same time, after Mr. Ching had talked to Doctor Tong, did you talk to the doctor—Doctor Tong?

A. After Mr. Ching talked to Doctor Tong, I did.

(Testimony of Hiram Fong.)

Q. Do you recall what Doctor Tong told you or Mr. Ching at the time?

A. I think it was at the time a question——

Mr. Lee: I object to anything about what Doctor Tong told Mr. Fong, as hearsay.

The Court: Yes, it would be hearsay. If he related the conversation to your client, it would be a different thing.

Mr. Waddoups: Pardon?

The Court: If he related the conversation to the client.

A. Before I answer the question, also, I would like to inject this: I don't know whether it is ethical for me, really, to take the stand, being the attorney in this matter at the time, and I would like the court to rule on that.

The Court: Here is the situation, Mr. Fong, with reference to this, the respondents, the Tenn Brothers, for whom you drafted the partnership, they have produced you as a witness, so that you are not, as I understand the rule, under any——

Mr. Waddoups: They have waived their attorney-client relationship. [198]

The Court: If they produced you as a witness, the ruling against an attorney revealing a conversation between he and his client does not exist in this particular situation.

Mr. Lee: May I ask a question on that phase of it before proceeding on this testimony?

Mr. Waddoups: No objection.

(Testimony of Hiram Fong.)

Q. (By Mr. Lee): Mr. Fong, at the time were you representing Mr. and Mrs. Lum?

A. Primarily I was attorney for Mr. and Mrs. Lum, trying to sell the Green Mill interest to the Tenns and to Mr. Ching.

Q. It so happened that with the understanding of all parties concerned, they wanted you to also follow the thing through to see that the sale was consummated between the parties?

A. That was the understanding.

Q. There was an understanding that you were to draw up the partnership papers for the parties?

A. Yes.

Q. You acted for Mr. Ching?

A. I don't know whether I acted for Mr. Ching or I acted for the purchasers. The question as to who was the purchaser came up naturally afterwards. To ascertain as to who was the purchaser I have to ask, being an attorney, you have to ask who were the purchasers.

Q. That's right. There was one question, whether or not you understand the purchasers were the Tenn brothers and Mr. Ching, or just the Tenn brothers—— [199]

A. In the family?

Q. In the family, that's what I mean.

A. In the family. Ching came to my office several times, together with the Tenn brothers. But later it developed only the Tenn brothers bought it. The letter that went to the liquor commission, which I wrote—that also I can't recall whether or not I

(Testimony of Hiram Fong.)

stated to the liquor commission that the recall whether or not I stated to the liquor commission that the Tenn brothers were buying it. I believe if you will look at the records, that you will find that's so.

Q. (By Mr. Waddoups): You say it was your impression that Ching was to be a purchaser?

A. That was my impression, that he was supposed to be with them.

Q. Did you receive any instructions concerning the preparation of these documents later?

A. Yes, I did receive from Doctor Tong—from Mr. Tenn.

Q. What were your instructions so far as they related to Mr. Ching?

A. The instructions were that the purchasers would be Kui Hing Tenn, Chong Hing Tenn, and Fook Hing Tong, as Mr. Ching was not able to supply any money at all.

Mr. Waddoups: Your witness.

Mr. Lee: I move to have that last statement stricken?

The Court: That is, his instructions?

Mr. Lee: It is not instruction, so far as the statement about not being able to raise money. That is not instruction. [200]

Mr. Waddoups: If your Honor please, counsel opened up this question, and he argued it at great length yesterday, the fact he was telling Mr. Fong what to do.

Mr. Lee: Well, certainly, I am glad Mr. Fong

(Testimony of Hiram Fong.)

is telling the court who told what, but any statement made by any of these parties concerning Ching's inability, or whatever you may call it, to put up the money, that, it seems to me is irrelevant.

The Court: No. It is not irrelevant by any means. The only question is as to whether it is a self-serving declaration on the part of Tenn brothers.

Mr. Lee: It certainly is, your Honor.

The Court: It is certainly relevant and material to the issues. There is no question about that.

Mr. Waddoups: It is in the same category as the testimony given by Mr. Lum as to what was said by the parties. This is all part and parcel of the proposed deal. It seems to me that any evidence that the court can get——

The Court: The court will admit it, subject to a motion to strike at a later time.

Q. (By Mr. Lee): Did you have a file, Mr. Fong——

The Court: Wait a minute, he is not through with his examination.

Mr. Lee: Oh, I thought he was.

Q. (By Mr. Waddoups): Do you recall, Mr. Fong, whether this conversation that you had and Mr. Ching had with Doctor Tong on Maui, was before or after the partnership agreement had been executed? [201]

A. It was before, and I talked to Doctor Tong on the 'phone at the time and asked him who would be partners.

(Testimony of Hiram Fong.)

Q. As a result of that conversation, you prepared the partnership papers?

A. No. I wasn't sure yet. After that conversation I talked to Mr. Tenn, Chong Hing Tenn, and I asked him if Doctor Tong was correct, that the partners would be so and so.

Q. Then, as a result of your conversation with these respondents, you prepared a document, the document which you are now holding in your hand, Exhibit A?

A. Yes.

Mr. Waddoups: Your witness.

Cross-Examination

By Mr. Lee:

Q. You first came into the picture, as I understand it as attorney for the proprietors at the time, Mr. and Mrs. Lum Kam Hoo?

A. That's correct.

Q. It was some time in September, wasn't it, 1941, that you got word from the proprietors that they were going to sell the Green Mill to Mr. Ching and the Tenn brothers?

A. I can't recall the date.

Q. Well, I noticed Mr. Waddoups asked you the month of October, 1941, concerning the partnership?

A. The date of the partnership?

Q. The date in the partnership, is that correct?

A. Yes.

Q. In other words, perhaps I could try to refresh your [202] recollection this way: The date of the partnership was inserted in handwriting?

(Testimony of Hiram Fong.)

A. That's true.

Q. It wasn't typewritten, the date on the partnership?

A. No.

Q. Now, can you remember, Mr. Fong, how many weeks, shall we say, before the document of partnership was actually executed, to wit, October 14, by the two Tenns, did you have knowledge of the proposed sale of the Green Mill by Mr. Lum?

A. I couldn't actually recall, I would say a matter of a month, probably.

Q. About a month?

A. Three or four weeks.

Q. Three or four weeks, approximately?

A. Yes.

Q. Who informed you that there was going to be this proposed sale?

A. I couldn't remember how the thing came up. I know Mr. Ching was in my office. Mr. Tenn was in my office.

Q. In the beginning——

A. He came to me and talked to me about. I couldn't remember. Probably Mr. Lum talked to me. Mr. Lum was in the process, trying to sell this place.

Q. He was a sick man at the time?

A. He was a sick man. He even wanted me to take it over one time.

Q. Maybe you would be better off to take it?

A. Yes. [203]

Q. You have a folder?

A. Yes.

Q. Haven't you, on this Green Mill thing?

(Testimony of Hiram Fong.)

A. Yes.

Q. And this folder was in Ching's name, or Chong Hing Tenn?

A. No. That folder was in the name of Green Mill, and it was kept in my personal drawer, because of the personal relationship I had with Mr. Lum. Those papers were really belonging to Mr. Lum.

Q. I know that you acted for him, not only as attorney, adviser and everything, so that he had implicit confidence in you, I understand that.

A. Yes.

Q. You drew up the bill of sale, did you not?

A. I did.

Q. You received the moneys, the down payment for the proposed sale?

A. I couldn't recall. I can't recall how the money was passed.

Q. Do you recall whether or not you had books which would show that you received the money for the purchase of the Green Mill, if the money was paid over to you?

A. No. I don't believe it would pass through my books, because if it was, being such a big amount—naturally, it would come into the office in a check, I would probably pass it over.

Q. Pass it over to your clients, the Lums?

A. Yes. [204]

Q. Now, do you recall whether or not the check was paid to you for the purchase of this property?

A. I don't remember, but the usual practice in

(Testimony of Hiram Fong.)

my office is always have the check made payable to the seller; never to me.

Q. How did they give you that check, possession of the check?

A. I don't know, as I said, I don't know whether it was money or cash or a check, how it was passed. That I can't recall.

Q. Do you recall what the purchase price of the deal was?

A. I can't even recall that now.

Q. There is no dispute about the amount, so I may inform you to refresh your recollection it was \$25,000, plus the inventory, which was about \$10,000. Do you recall whether a check for \$25,000 was turned over to you for Mr. Lum?

A. That I don't recall.

Q. Do you recall whether there was a check of \$15,000 first paid through your office?

A. I don't recall that.

Q. You don't recall that. I will show you Petitioner's Exhibit J, and Petitioner's Exhibit C, both of which purport to be a bill of sale for the Green Mill.

The Court: Exhibit J is a copy of what he filed with the liquor commission.

Mr. Lee: That's correct, your Honor.

Q. Will you take a look at these documents?

A. Yes.

Q. They are exactly the same language, aren't they, I mean so far as you can see?

The Court: By a cursory perusal?

(Testimony of Hiram Fong.)

A. Yes. [205]

Q. Did you notice the difference in the date of the indenture, the date of the heading?

A. You see, the policy of the liquor commission is this: That before they will approve of a transfer, they want you to make a bill of sale to keep, we sent them a copy of a bill of sale. There may be a discrepancy of ten days from the time it was delivered to the liquor commission and the time of the actual consummation. That is the only way I can explain it.

Q. In other words, so far as this copy which was filed with the liquor commission, Petitioner's Exhibit J, that was dated October 10, 1941?

A. Yes.

Q. Wouldn't you say, so far as the seller and the purchasers were concerned, that the deal had been consummated prior to October 10, 1941?

A. I would say with the copy of the bill of sale and the letter to the liquor commission, that must have been a meeting of the minds, otherwise I would not have sent that to the liquor commission.

Q. Because it was an executed copy, wasn't it, by Mrs. Lum, your client, that you filed with the liquor commission? They require a duplicate original, don't they?

A. No. So far as the liquor commission is concerned, they want a copy of it, not an executed copy. Now, it seemed that was executed, wasn't it?

Q. It was executed, Mr. Fong. I am trying to inform you that this was an executed copy, so that

(Testimony of Hiram Fong.)

Mrs. Lum had already given a bill of sale to the Tenn brothers on October 10, 1941, isn't that [206] right?

A. Whether there had been delivery of the bill of sale or not, I don't know, but according to the document, it seemed that she did sign it. All I can say is that Mr. Lum had implicit faith in me, and would execute all papers and leave them with me.

Q. In other words, so far as the seller was concerned, he left all the legal and financial details practically in your hands? A. Yes.

Q. He had such confidence in you?

A. Yes.

Q. Wasn't that the understanding of all the parties concerned, not only Mr. and Mrs. Lum, but the Tenn brothers and Mr. Ching, that you would handle the legal papers? A. That's correct.

Q. After the few original conversations that you had with Mr. Ching, and several of the Tenn brothers, you received thereafter most of your instructions direct from Doctor Tong and Chong Hing Tenn?

A. I think, so far as Doctor Tong was concerned, it would be a telephone conversation. That probably was the only one. Or there might have been a letter from him. I don't recall. It was from Mr. Tenn mostly.

Q. Chong Hing Tenn, he was the one that gave you most of the instructions, is that correct?

A. Yes.

Q. Do you recall on October 20, about that time, 1941, there was this 'phone call made by Mr. Hung

(Testimony of Hiram Fong.)

Chin Ching to Doctor Tong—I don't know what the date was—some time in October, wasn't it? [207]

A. I don't know.

Q. Well, then, you really don't know whether it was before or after the completion of all the legal documents?

A. It must have been prior, because I didn't know then as to who the partners were.

Q. Don't you recall that conversation with Mr. Ching, when he asked you, "How are the partnership papers?" and you said, "You are out; you are excluded from the partnership papers," don't you recall that, or words to that effect? A. No.

Q. You don't? A. No.

Q. Now, this conversation at your office, where you testified that it must have been, by your present recollection now, it must have been before the final papers of partnership were drawn, do you recall that it was a surprise to Mr. Ching that he was not included as one of the partners?

A. No. I think at the time of the conversation between Fook Hing Tong and myself there seemed to have been an understanding at the time.

The Court: An understanding of what?

A. Of whether he was in or out, because he called Mr. Tong at the time from my office, and Mr. Tong talked with me. Now, I don't remember whether I told Mr. Ching what Mr. Tong told me.

Q. Do you remember that Mr. Ching decided to go to Maui immediately?

(Testimony of Hiram Fong.)

A. I think he did. I think he did following what Mr. Tong told me. I think he went to Maui, but I couldn't swear to it.

Q. It was your understanding at the time—this is clear, [208] Mr. Fong, in your mind—that at the time when Mr. Lum, your client, informed you to prepare all the papers, etc., you had discussions with Mr. Ching and Mr. Tenn that the prospective purchasers were the Tenn brothers and Mr. Ching?

A. That was the understanding originally, that it was the Tenn brothers and Mr. Ching who were going to be involved as purchasers of this tavern.

Q. In fact, it was your understanding at the time that Mr. Ching was one of the principal cogs in the wheel?

A. Well, he came to my place three or four times and talked about it. I think that he also talked about an inventory, and things like that.

Q. All the details that went with the purchase of the business?

A. He seemed to know what was going on.

Q. Just one more thing. I will show you what purports to be a statement of the copartnership, filed in the treasurer's office October 20, 1941.

The Court: Does that have an exhibit number?

Mr. Lee: Petitioner's Exhibit D.

A. It seems to have been prepared in my office, because my notary public notarized it.

Q. You notice that it certifies that the partnership had been formed as of October 1, 1941, is that correct?

(Testimony of Hiram Fong.)

A. Yes, that's so, according to this.

Q. Therefore, does it refresh your recollection that the partnership had been formed on October 1, 1941?

A. According to this, it must have been formed on the 1st [209] day of October.

Q. By the way, of course that speaks for itself, that the partners were Fook Hing Tong, Chong Hing Tenn and Kui Hing Tenn? A. Yes.

Q. And Mr. Ching was not included?

A. No.

Q. Mr. Fong, I will show you also Petitioner's Exhibit B, which is a communication addressed to you by the liquor commission in response to a letter by you, on behalf of Mrs. Elsie Lum, asking for a transfer of liquor license—your letter dated October 6, 1941. Do you recall that you received this letter from the liquor commission? A. Yes.

Q. Do you notice, also, that in this letter, it states in your application to the liquor commission to have it transferred to Fook Hing Tong, Chong Hing Tenn and Kui Hing Tenn? Do you notice that?

A. Yes.

Q. This was true, by your present recollection, that you must have received instructions prior to October 6, 1941, of who the prospective purchasers were going to be?

A. It must have been, because I must have wrote to them on the 6th day of October.

Q. Just like the certificate of partnership, when you stated it was October 1? A. Yes.

(Testimony of Hiram Fong.)

Q. These instructions that you had of who the partners were came from Chong Hing Tenn primarily, is that right? [210] A. Yes.

Mr. Lee: No further questions.

Mr. Waddoups: Thank you, Mr. Fong, that's all.

(Witness excused.)

DAVID P. SOARES

called as a witness on behalf of the respondents, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Waddoups:

Q. What is your name, please?

A. David P. Soares.

Q. Mr. Soares, at my request were you asked to serve a subpoena—I withdraw that—I will show you a subpoena bearing Equity Number 4416, being the number of the case now on trial. Do you recognize that document? A. Yes. I do.

Q. At my request, were you asked to serve that document? A. Yes.

Q. I call your attention to the return on the back of the page of this document, on which you say, "Unserved on Arthur Pai, gone to Maui, June 22, 1948."

Where did you attempt to serve Mr. Pai?

A. At his house, and at his place of business. I went out there to Nuuanu street, and they said Pai was not in. I said, "What time is he coming in?"

(Testimony of David P. Soares.)

They didn't know. I went to his home address, they said, "Pai not in." I went back again last night, about 8:00 or 8:30, and asked for Mr. Pai. They said he wasn't in. They asked, "Who is it?" I didn't tell [211] them who I was. I said, "Who are you, Mrs. Pai?" She said, "No. I am the daughter. My father went to Maui yesterday, on the 22nd."

Q. Did she say when he was coming back?

A. She didn't know. I said, "Where is your mother?" She said, "She is out on a party." She didn't know what time she is coming back.

Mr. Waddoups: Thank you, Mr. Soares.

(Witness excused.)

FOOK HING TONG

a respondent herein, was recalled, and testified as follows:

The Court: The witness has already been sworn.

Direct Examination

By Mr. Waddoups:

Q. You are Doctor Fook Hing Tong?

A. Yes.

Q. You are the same witness who testified earlier in this proceeding? A. Yes.

Q. Now, Doctor Tong, how old are you?

A. I am 44.

Q. What has been your education?

A. Well, I have a medical degree. I spent four

(Testimony of Fook Hing Tong.)

years at the Territorial Hospital after my graduation and internship, and came out to practice medicine. Then I had a job at the City and County, in addition to my practice. In 1940, I volunteered for the National Guard, for the defense. During that period the blitz came, so I was held up six years. I went in for one [212] year, and I got five years. I am practicing now on my own.

Q. Are you practicing in Honolulu?

A. Yes.

Q. Are you associated with anyone?

A. Not associated with anyone.

Q. You have your own private practice?

A. I have my own private practice.

Q. You are a duly licensed physician and surgeon?

A. Yes. I am also at the City and County Hospital unit, as assistant to Doctor Mossman.

Q. Now, Doctor Tong, there has been testimony in this case concerning really the first meeting, or the gathering of the clan—that meeting that they talked about which was held at your house, at which your father was present, you, and the other respondents, and your brother—another brother.

A. Yes.

Q. Now, Doctor, what arrangements were made at that meeting between you with respect to the relationship which Mr. Ching bore to the partnership or the prospective partnership, if any?

A. At the time we were all there, the agreement was to raise the money. We were planning, so far

(Testimony of Fook Hing Tong.)

as I was concerned, the plan of that was secondary to the primary purpose of getting the property. It takes money to do business. So I asked who could finance it. I asked Mr. Ching, as in the previous testimony, what he wanted, and he said that he wanted \$2,000, or something to the effect of \$3,000.

Q. From whom was he to get those three shares? From whose [213] portion of the prospective partners?

Mr. Lee: I object to that question. It is direct.

The Court: Overruled. It doesn't suggest the answer, when you ask him how was he to get it.

A. Well, it came later on. We had to put up the money. There was a lot of competitors trying to get it. Mr. Ching didn't have it. He asked me to finance him. I had my ten, I told him I would take care of him provided he put up the money.

Q. From your ten shares? Did he ever put up the money?

A. Well, there was four or five or six occasions I asked him, and he never put up any—not a red cent.

Q. Doctor, I call your attention to Petitioner's Exhibit A, and A-1, the first being a letter, dated October 6, written to Mr. Ching, and Exhibit A-1, being a copy of a letter which was addressed to—I think the testimony shows—your brother, Chong Hing Tenn. Tell the court what impelled you to write this letter to Mr. Ching?

A. Well, I had received a letter from him, concerning our business going on.

(Testimony of Fook Hing Tong.)

Q. Do you have that letter now?

A. No. In the rush of the blitz and everything, it got mixed up and burned.

Q. What was the general purport of that? Who was the letter written to, if anyone?

A. The letter was written to Chong Hing Tenn, about his conduct, cold, pulling stone faces, driving business away with that kind of mug he has, not getting along with the employees. [214] We had a gold mine. There was a gold mine there. He would sure ruin the business.

Q. After you had written the letter which you have in your hand, Petitioner's Exhibit A, did you hear any other reports about the business? Just answer that yes or no. A. Yes.

Q. As a result of hearing these reports, did you do anything? A. Yes. I wrote a letter.

Q. To whom did you write a letter?

A. Mr. Ching. I told him to vacate the premises.

Q. By that, what premises did you mean?

A. I mean the Green Mill there.

Q. What happened to that letter, if anything?

A. He returned that letter to me, he said he is not guilty.

Q. Do you have that letter?

A. Well, that went all through all the process in the blitz, I couldn't keep anything.

Q. You do not have possession of that document?

A. No.

Q. Now, was that letter addressed to him prior to or after his trip to Maui?

(Testimony of Fook Hing Tong.)

A. It was prior to his trip to Maui.

Q. Was that letter addressed to him prior or after your executed partnership agreement?

A. That letter was prior to the execution of the partnership agreement.

Q. Did you give any reasons in your letter to Ching, why you wanted Ching——

A. Yes. [215]

Q. What was the substance of those reasons?

A. One of them that he didn't have any money in the business, another thing, his conduct, his character, so far as business is concerned, it wasn't businesslike. That he had broken faith with me. I had all confidence and faith in him, and he had betrayed my confidence. After writing this letter, I then backed him up to the limit, but I got a report from several sources——

Q. Never mind what the reports were, that is hearsay. Your testimony is that he returned that letter to you with the notation in his own handwriting to the effect "not guilty"?

A. I remember now. It was on the other side. The letter was a page and a half in my handwriting. He wrote on the back of it, "Not guilty."

Mr. Waddoups: Your witness.

Cross-Examination

By Mr. Lee:

Q. Now, Doctor Tong, going back to your testimony relating to what took place at your father's home——wasn't it? A. Yes.

(Testimony of Fook Hing Tong.)

Q. Not your home? A. No.

Q. Now, you stated, so far as you were concerned, raising the money was the thing you were principally concerned with, is that right, at that conference?

A. Yes. I was principally concerned with it.

Q. The matter of the purchase of the business, that is incidental to the whole purpose, or am I correct? [216]

A. If you haven't got the money, you can't buy anything.

Q. Is that what you want the court to believe, that the purchase of the business was incidental?

A. Yes, I don't want the court to believe, but it is my own, what do you call it, impression. What's the use of putting the cart before the horse? It takes money. You have got to have money to conduct business these days.

Q. As a matter of fact, you people were pretty hot about buying that business, so hot that you folks immediately called Mr. Lum, and went to his home that very night? A. Yes.

Q. Hot after the purchase?

A. Mr. Ching came over to the house, we talked it over.

The Court: I take it by "hot" you mean quite anxious. A. No.

Mr. Lee: We are using the words "dong"—what I meant is anxious.

The Court: You are using the language of realtors when they use "red hot prospect."

(Testimony of Fook Hing Tong.)

A. No. I don't think I was too anxious.

Q. You were not? A. No.

Q. As a matter of fact, Ching did call up Lum that very night? A. Yes.

Q. You are willing to admit that?

A. I admit what went on, to the best of my memory.

Q. Then answer this question: Did all of you get into the [217] car of Mr. Ching and drive immediately to Mr. Lum's home? A. Yes.

Q. Before you drove over to Mr. Lum's home, wasn't it agreed that Mr. Ching was to put in \$3,000?

A. Not before. We didn't know whether the place was to be purchased or not.

Q. Well, now, you just mentioned yourself, your brother Chong Hing Tenn admitted finally that Mr. Ching was to put in \$3,000?

A. I spoke, in my former testimony here, after we found out it was for sale.

Q. I am talking about the conference held at your father's home.

A. That's what I meant. That's the first time I ever heard of that place being for sale. That is the first time we ever got together.

Q. You mean to say, then—let me refresh your recollection, do you recall whether or not you and Mr. Ching had seen Mr. Lum and had discussed the possible purchase of the Green Mill before the conference at the home?

(Testimony of Fook Hing Tong.)

A. I don't recall, because we went to a lot of places, socially, and otherwise.

Q. You mean socially to the ones down on College Walk, Cafe Venice?

A. We went to Smiles.

Q. Did you go to the Cafe Venice?

A. I remember being there once.

Q. Do you recall going to the Riverside Grille, where K. C. Wong operates? [218]

A. I remember one afternoon there.

Q. You remember that, don't you?

A. Yes.

Q. You also remember dropping in at the Green Mill?

A. That was kind of hazy, I don't recall that. I have been there several times myself with other people.

Q. You recall you and Mr. Ching dropping in at the Green Mill, besides the Riverside Grille?

A. I may have. I don't really remember.

Q. You don't deny it? A. I don't deny it.

Q. Do you deny Mr. Ching spoke to Mr. Lum about the purchase of his business?

A. I think that at the time—my impression is we asked a lot of people if the place was for sale, maybe one of these was Mr. Lum. I don't know.

Q. You recall that.

A. I thought he was kidding Mr. Lum.

Q. You recall that Mr. Lum mentioned some figure, something like \$30,000, do you recall?

A. No. I don't.

(Testimony of Fook Hing Tong.)

Q. And that meeting with Mr. Lum, and at the Riverside Grille, all that took place before the conference at the Tenn home, isn't that right?

A. Oh, yes.

Q. So that at the Tenn home, it happened that your brothers were there? A. Yes.

Q. That means Chong Hing Tenn, Kui Hing Tenn, and your [219] father?

A. Yes. We were sitting waiting, after supper, we were sitting together.

Q. It was a family conference. Well, now, at the time, were you permanently residing at that home?

A. No. I was down here for a trip.

Q. Now, was Chong Hing Tenn permanently residing at the home at the time?

A. I don't recall. I think he was down here on several occasions.

Q. He was living out Kohala, wasn't he; he was still a Kohala boy? A. Yes.

Q. He was down here particularly interested in getting into the liquor business in Honolulu, wasn't he? A. No. Real estate.

Q. In business, anyway? A. In business.

Q. Because he was also trying to get you interested in the Motor Coach Cafe prior to that time? A. Yes.

Q. Was Kui Hing Tenn permanently residing at this home of your father at the time?

A. Yes. I think so. I don't recall. I think they were all staying there.

(Testimony of Fook Hing Tong.)

Q. Was Kui Hing Tenn practicing dentistry at the time?

A. I think he was working for the Palama Settlement.

Q. He wasn't married at the time? [220]

A. To my knowledge he was not.

Q. He is married now? A. Yes.

Q. Your mother was living at the time, was she? A. Yes.

Q. You also have another brother by the name of D. Hing? A. Yes.

Q. Was he living at that home at the time?

A. I think so. I don't really recall.

Q. How many bedroom home is that?

A. Only three.

Q. Three-bedroom home? A. Yes.

Q. This was true, you and Chong Hing Tenn weren't living there permanently, you just dropped in for a visit, is that right? A. Yes.

Q. When you had special conferences, is that right?

A. Not special conferences. We have to come there. It was the family home. We didn't have to gather there for a conference or anything.

Q. Well, you think sometimes when you came down from Maui you would go outside, you didn't eat at the family home?

A. I came to see my family.

Q. That night you had dinner at the family home, is that right? A. Yes.

(Testimony of Fook Hing Tong.)

Q. So after dinner, there was this conference, wherein Chong [221] Hing Tenn was present, Kui Hing was present, you were present, and your father was present, and Mr. Ching, isn't that right?

A. No. Mr. Ching wasn't there then.

Q. You mentioned he was there that night?

A. No. He came later. The first thing I knew of the Green Mill, somebody approached the subject, and said the Green Mill was for sale. I said nothing. Well, it is for sale, it is for sale.

Q. Then wasn't the amount mentioned \$25,000 or \$30,000?

A. Something like that. Something was mentioned about how much, but I wasn't sure whether there was really a purchase or not. There was nothing sure about it.

Q. Well, you know that Mr. Ching was to contribute \$3,000 into this venture? If you people were successful in buying this Green Mill, he was supposed to put in \$3,000?

A. He was supposed to contribute \$3,000 to me.

Q. I am just talking about that agreement.

A. Talking about that agreement, that agreement came after the purchase, after we were sure that the owner was going to sell.

Q. Well, now, wasn't it agreed at the time, at your home, that Ching was to put \$3,000 in and you people were to buy the balance?

A. No. Got your sequence wrong. You got the sequence wrong. I have not bought the place. I

(Testimony of Fook Hing Tong.)

don't know whether it is for sale. How can we make an agreement?

Q. In other words, what your brother Chong Hing Tenn [222] stated——

A. He just heard a street rumor it was for sale. I am just from the country, and green in the city then. I don't know what is going on at the time.

Q. You are not so green, Doctor Tong.

A. I have learned since.

Q. You attended the University of Hawaii, didn't you?

A. Yes, as a student. I didn't know much about business.

Q. You have been pretty successful in business during the war?

A. That is strictly luck, yes, that's all.

Q. I think it wasn't luck.

Mr. Waddoups: Well, let's not argue about it, shall we. Let's get the evidence in.

Q. So all of you got into Mr. Ching's car and went over to Mr. Lum's home; that you remember?

A. I remember after I heard that the place was for sale, I remember we had a discussion here, so Mr. Ching came, my good friend, I asked him, I said, "Do you know where Mr. Lum lives?" He said, "Yes. What is it?" "Well, there is a rumor that the place was for sale." He said, "Well, let's go up and take a look," and he called first on the telephone. Mr. Ching called. He was a live wire then, still is, I think.

(Testimony of Fook Hing Tong.)

Q. And he was the fellow that was hot—anxious about getting into the liquor business at the time, and getting you people into it with him, isn't that right?

A. Not getting me. He was going with me all the time, [223] taking me here and there.

Q. You just testified that you and he, before this conference at your home, checked into the liquor business from the Riverside Grille and the Green Mill, isn't that right? You were already angling for the purchase of the business?

A. We were angling all over, if anybody want to sell. We didn't know whether they want to sell or not. We were just feeling him out. I didn't know whether he was kidding or not. How can you find out if a man wants to sell or not. You go and ask him.

Q. You thought Mr. Lum was kidding you at the time that you and Mr. Ching went to see him about selling the business?

A. Mr. Ching was a nice fellow, happy-go-lucky, he goes around, and he asked everyone, "Do you want to sell this place? I will buy it." I thought it was all in fun, or what not, just to start the conversation—you could term it conversation, or something of that sort.

Q. You people were not seriously thinking about purchasing? A. That's right, Mr. Lee.

Q. You were just kidding around?

A. Kidding around. I wasn't kidding. He was the one that does that. I just sat down, that's all.

(Testimony of Fook Hing Tong.)

Q. Of course, Doctor, you were not kidding at the time when you sent Mr. Ching to telephone and call Mr. Lum about going up to the house?

A. I just want to find out if it was for sale.

Q. You were on business then? A. Sure.

Q. So immediately you went over to Lum's [224] home?

A. We got a ride, and got the old man to ride, if he wants to go.

Q. You go to Lum's home? A. Yes.

Q. You all went inside Lum's home?

A. I guess so.

Q. Mr. Lum agreed to sell to Mr. Ching, to you, and your brothers, his business for \$25,000, didn't he?

A. If I remember right, Mr. Lum struck up a very fast conversation with my father, saying that he was old time Chinese, and what not, and he would be glad to do business, and he was willing to sell the place for that stated amount. I don't know, but they told me I should put up a check, or somebody put up a check to bind the deal, and in the conversation that led on, Mr. Lum referred to Mr. Fong who handled his business. I told him, "Well, I know Mr. Fong well, too." So we have a mutual friend, I though the business could be taken care of in a more satisfactory manner.

Q. In other words, Mr. Lum agreed to sell to you and Mr. Ching and your brothers?

A. Yes.

Q. Mr. Ching was in the deal?

(Testimony of Fook Hing Tong.)

A. He was in the deal, right in the deal.

Q. Right up there, he was in the deal, you admit that? A. Yes, he was right in the deal.

Q. Didn't Mr. Lum also say that since he and your dad were old friends, etc., that you go on a trial period of operation, wherein he and his wife would offer their services in teaching [225] Mr. Ching and Mr. Chong Hing Tenn how to run the business?

A. Yes. That happened. I think it happened at the time.

Q. At the time——

A. I don't recall the sequence, but they were willing, or offered their services so that they learned the ropes.

Q. So the deal was closed so far as the agreement?

A. The agreement was closed, so far as——

Q. The amount and the price?

A. The amount and the price.

Q. It was just a question of what the inventory would cost? A. Plus the inventory.

Q. Yes, plus the inventory. Going back for a moment, at the conference at your home, the Tenn home, did you people discuss as to who was to run the business when you people purchased it?

A. No. We didn't. No such discussion.

Q. No such discussion?

A. It was just to buy on their terms. We didn't own the place.

(Testimony of Fook Hing Tong.)

Q. Just answer the question, please. Let the court draw its own conclusion. That is what we are here for. My question is was there any discussion concerning the duties of the respective partners? A. No discussion at all.

Q. Was there any discussion at the Lum home, after Mr. Lum agreed to sell for \$25,000, as to the respective duties of the partners? [226]

A. No discussion.

Q. Was there any discussion as to whether or not Mr. Ching was to leave the police force, to help manage the business there? Was there any discussion? A. Prior to that?

Q. Yes. A. No.

Q. Was there any discussion about your brother Chong Hing Tenn handling the finances?

A. No discussion at all at the time.

Q. Then after the conferences at Lum's home, then it was the understanding by all the parties that Hiram Fong was to handle the papers?

A. Yes.

Q. You left for Maui, around the latter part of September? A. Yes.

Q. You left with Kui Hing, your brother, some \$10,000? A. Yes.

Q. You are sure it wasn't \$15,000?

A. I don't quite remember. I don't think it was \$15,000.

Q. That's a lot of money. You don't know whether it was \$10,000 or \$15,000?

A. \$10,000.

(Testimony of Fook Hing Tong.)

Q. You are sure about that?

A. That's all I had.

Mr. Lee: Mr. Waddoups, may I have the bank statement, please?

Q. Did you have this bank statement of your brother? A. I saw it the other day. [227]

Q. Did you notice that your brother Kui Hing Tenn had \$248.34 in his account? A. Yes.

Q. That is as of September 25, 1941?

A. Yes.

Q. And that thereafter he deposited \$15,000 into his account? A. Yes.

Q. Does that refresh your recollection as to whether or not you put in or left \$15,000 instead of \$10,000?

A. I recall that he was handling my finances. He had a strong box that he put money in there. I recall now I also borrowed \$1,000 at that time.

Q. At the time, from whom——

A. I didn't borrow it, but——

Q. So you got \$1,000? A. Yes.

Q. You didn't leave with your brother, Kui Hing, \$15,000 total which he deposited in his account?

A. Well, yes, his money and my money was kept—we had a safety deposit box. Of course, I was going away. I left it up to him. He was just like a trustee, or something.

Q. You also noticed yesterday that the sum of \$10,000 was deposited on September 30, in his account? A. Yes. I noticed that.

(Testimony of Fook Hing Tong.)

Q. Does that refresh your recollection that \$15,000 was paid, and a check was drawn payable to Kam Hoo Lum, the owner of the Green Mill, in the sum of \$15,000? Did you [228] notice that, or does that refresh your recollection?

Mr. Waddoups: I might state, counsel, that it might expedite matters if you got that information from Kui Hing, because that is his account. I imagine he knows more about it.

Mr. Lee: I would be glad to expedite it. But I didn't know whether you were going to put Mr. Kui Hing on as a witness. I might not be able to ask him on a new matter.

Mr. Waddoups: I would be glad to do so, so that you may.

Mr. Lee: All right. I withdraw it.

Q. This letter of October 6, 1941, which you wrote to Mr. Ching—— A. Yes.

Q. You stated in that you had left, you had put in the business \$15,000.

A. That was what I thought. I think it was a mistake.

Q. When did you first discover that mistake?

A. Just now.

Q. Just now?

A. Just when you put that letter—showed me that letter, then I realized that it was a mistake.

Mr. Lee: I am a little fatigued. May Mr. Castleman continue the examination? Is there any objection by counsel?

(Testimony of Fook Hing Tong.)

Mr. Waddoups: I have no objection.

Q. (By Mr. Castleman): Thereafter, you went to Maui, and [229] you were in constant touch with your family and your brothers on the island here after you went back to Maui? A. No.

Q. You were not in touch with them at all?

A. No.

Q. When you left for Maui, what was the arrangement with respect to the accumulation of money to buy this business? You left some money with your brother? What was the arrangement with respect to the accumulation of the rest?

A. Mr. Ching was supposed to give me \$3,000.

Q. When? A. As soon as he could get it.

Q. Now, on October 6, you wrote a letter which is in the record as Exhibit A, I think.

The Court: Yes.

Q. This was October 6, you identified this letter. You recall having written it, as I remember your testimony, and in this letter you tell him that he has three shares in the business, do you recall that? A. I reserved three shares.

Q. No, that's not—I will ask you if you state in here, Doctor, that you have fifteen shares, and “you,”—meaning Ching—“have three.” That is what it says. “That is if you get the dong by then.” What do you mean by that? Then what did you mean “by then”? You wrote the letter on October 6, on Maui. Now, it would take that letter some period of time to reach its destination,

(Testimony of Fook Hing Tong.)

would it not, to reach Mr. Ching? It would take some days—— [230]

A. A couple of days, I think.

Q. A couple of days. On October 8, he gets a letter from you, in which you tell him that he has three shares. That's what you said in your letter, isn't it? A. Yes.

Q. You say, "That is if you got the dong by then." What do you mean "by then"?

A. By the time that he gets this letter.

Q. You wrote the letter on the 6th?

A. Yes.

Q. Which he would receive, we will assume, on the 8th? A. Yes.

Q. In the letter you told him that he has three shares, provided that he gets the dong by then. Now, you are an educated man, what did you mean by "then"? A. I just said.

Q. Well, I didn't understand you, Doctor, I will ask you to explain your answer a little further.

A. I say upon the receipt of this letter he should have the money ready, at all times since the inception of this deal. I have been asking——

Q. You are a professional man, you have sent bills to your patients for services rendered?

A. Yes.

Q. You certainly do not expect us to believe that you expect the patients to have payment for those bills in your office on the same moment——

Mr. Waddoups: I object to that, your Honor, as—— [231]

(Testimony of Fook Hing Tong.)

The Court: Sustained.

Mr. Castleman: If your Honor please, I submit that——

The Court: The court has ruled.

Q. Now, isn't it a fact that at the very moment that you were writing Mr. Ching, assuring him that he had three shares in the business, your brothers and yourself had already made arrangements with Hiram Fong to draw up the papers?

A. No.

Q. You wrote the letter on the 6th, and you heard the testimony of some of the witnesses, the witness Hiram Fong this morning, stated on October 7, or on October 6, the same day that you wrote this to Ching, that he wrote the liquor commission requesting transfer of the business to you and your brothers, you heard that, didn't you?

A. That is preliminary.

Q. You also heard Mr. Fong testify, did you not, that his instructions in this matter had come from your brother, did it not? A. Yes.

Q. Isn't it true, then, Doctor, that on the very day that you wrote Mr. Ching that he had three shares in the business, your brother had already taken steps with the lawyer to see that he was excluded?

A. Not excluded, only as I held these three shares, because in that partnership it would be if Mr. Ching had his money. The business had to go on. I had his three shares, he can take it out

(Testimony of Fook Hing Tong.)

of my share any time that he showed the [232] money. He wanted me to finance him. I said I could not. I said, "That is not according to business rules."

Q. Do I understand that you were willing for him to have three shares in this business any time that he produced \$3,000?

A. At the moment, yes.

Q. If he tendered you \$3,000 now would you give him three shares in the business?

A. That was subsequently in the letter.

Q. If you got—if he tendered you \$3,000 now, would you give him three shares of your interest in the business? A. No.

Q. I understood that was your version of this arrangement.

Mr. Waddoups: The testimony was at the time, Mr. Castleman.

Q. When he came to Maui to see you, he was pretty much outraged, wasn't he? A. Who?

Q. Mr. Ching.

A. No. He was very submissive.

Q. He was very submissive? A. Yes.

Q. And you felt—you thought that you had done right by him?

A. I felt that he didn't do right by me. I believe this letter shows that. I backed him to the limit. That he didn't carry out instructions. He didn't back me up.

Q. You felt when he visited you at Maui that he hadn't [233] done right by you? A. Yes.

(Testimony of Fook Hing Tong.)

Q. Now, I believe you testified the other day when you were on the stand that he visited you on Maui about October 12, is that true?

A. That's right.

Q. Now, you wrote the letter on October 6, which he received, we will assume, on October 8, in which you appeared to back him up all the way. Isn't that the sum and substance of this letter?

A. That was the purport of it.

Q. Now, four days later you saw him on Maui?

A. Yes.

Q. You felt that he has not done right by you, is that right? A. That's it.

Mr. Waddoups: Are you through, Mr. Castleman?

Mr. Lee: Just a moment.

Q. (By Mr. Lee): Doctor, you were sort of head man in this transaction, weren't you?

A. So far as Mr. Ching and I was concerned, I was the head of my own. My \$10,000 had been invested, sure.

Q. You also felt the pressure and the responsibility of criticizing your brother pretty heavily, did you not?

A. So far as that is concerned, we have spats, that's natural.

Q. On October 6, you did write a letter to your brother in which you used some pretty strong language, did you not? [234]

A. That's what it says.

Q. At the time you had the utmost faith and confidence in the petitioner, Ching, did you?

(Testimony of Fook Hing Tong.)

A. Yes.

Q. When you wrote this letter that you told him to vacate or get out, when did you do that?

A. I think it was about around Thursday, I think.

Q. Thursday?

A. On the 9th. I think I checked these dates up. The 9th was Thursday. Monday was the 6th. That was the date, Monday afternoon. I checked on the Inter-Island at the time. My recollection of checking these things—it was in 1944, when it first came up—I got to refresh my memory, so I checked around for the date. It was hazy to me then.

Q. You wrote this letter calling on him to vacate after he came to Maui?

A. No. Previous, between this letter and his arrival.

Q. Well, now, let's see, you say that he arrived in Maui on October 12.

A. I wrote from Maui a second letter.

Q. You testified, I believe, that he came to Maui on October 12.

A. Yes.

Q. Prior to that, you had written him a letter to vacate?

A. Yes.

Q. How long before? Before he got to Maui?

A. Well, between this letter, the date of this letter, and the 12th, some time in between. Mostly likely it was steamer day, Thursday. [235]

Q. Between the letter of the 6th, and the 12th, you wrote a letter, telling him to vacate?

A. Yes.

(Testimony of Fook Hing Tong.)

Q. What prompted you to write that letter?

A. Well, adverse reports.

Q. I thought you advised me that you were not in communication with folks over here.

A. I had a letter from my brother then, answering my letter to him. Then there were people coming up for the fair. They gave me all kinds of reports of what is going on over there, that Mr. Ching was in there. He was ruining business. He has two or three shots, and then he calls all his friends in. Then he is trying to live on the house. Everything is on the house. A certain fellow seen him take a bottle out, jeopardizing the business license. There is other occasions, too.

Q. That is what some other people told you.

A. Reports came in from people that I told them to take a look, too.

Q. Well, now, let's see, Doctor, on the 6th you wrote a letter telling him he was in? A. Yes.

Q. A letter which appeared to back him to the hilt? A. Yes.

Q. Which told him he was in, if he put up the dong by then, to use the words of your letter.

A. Yes.

Q. Now, two or three days later, when you wrote him two [236] or three days later—I understand you wrote him another letter telling him to vacate at the time, is this true—when he still was, under your view of the matter, an interested partner?

A. I told him to go in there as representing me, if he proved anything, I would sell him three

(Testimony of Fook Hing Tong.)

shares. I was still holding three shares for him, if he would go in there and prove himself as a good manager, and help the business. Instead of doing that, what he did, we were going to lose business. I'm sorry at my action, your Honor——

Q. Later, did you send to Mr. Ching, on the 6th, enclose a copy of a letter that you sent to your brother on the same day, isn't that true?

A. Correct.

Q. Now, you say that you also wrote him a letter telling him to vacate, because of the receipt of a letter from your brother, in answer to the one that you wrote him, as well as reports from people over there?

A. Everything. I had two brothers writing me letters, and other people writing me, too. It all came in a rush. That was boat day.

Q. Well, now, Doctor, are you sure that you are correct in fixing the time of these matters?

A. Well, from that letter, and the time that he showed up, perfectly, because in 1944, I checked those records.

Q. We have got two days, we have got the 6th and the 12th, a matter of six days between.

A. A matter of six days. [237]

Q. Under your testimony, a letter from Maui—this was back when I take it that air service was somewhat less than it is today, isn't that true?

A. I don't remember.

Q. In fact, the letter that you mailed to Mr. Ching was not even an airmail letter?

(Testimony of Fook Hing Tong.)

A. I think we had some army privileges. I don't recall that. But it was boat night, I remember that.

Q. It went out by boat? A. Most likely.

Q. So you don't know when it got here?

A. Probably the boat landed the next day.

Q. You don't know that you mailed it on the same day that the boat sailed?

A. I went down and mailed it. All our other mail was going, military and what not.

Q. Do you remember that this letter was posted on the same day that the boat sailed? A. Yes.

Q. Do you remember that, after these years?

A. Of course, I wouldn't get an answer.

Q. Do you remember that, Doctor, or are you just guessing?

A. I remember it, because I know our mails go through, military and regular, that is the only day that they mail. That is the boat day.

Q. So, the gist of the story as I get it is that within a space of less than a week, you went from hot to cold in this thing, so far as Ching is concerned, is that right? [238] A. Yes.

Q. Notwithstanding the fact that you assured him, in the letter of the 6th, that he was in to the tune of three shares?

A. So far as I am concerned.

Q. And failed to indicate to him any date within which you would expect him to contribute his portion of the money, isn't that true? Your letter of the 6th does not indicate any date, does it?

(Testimony of Fook Hing Tong.)

A. No. I held it for him, I think, due on the 1st of the month.

Q. And notwithstanding that, four or five days later you wrote and told him to vacate, isn't that true?

A. After hearing reports, yes, I wrote him that.

Mr. Lee: That's all.

Mr. Waddoups: No further questions.

(Witness excused.)

Mr. Waddoups: I will call Mr. Centio, please.

WILLIAM CENTIO

called as a witness on behalf of the respondents,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Waddoups:

Q. State your name, please?

A. William Centio.

Q. What is your business or occupation?

A. Police officer, City and County of Honolulu.

Q. How long have you been a police officer, Mr. Centio?

A. About eighteen years.

Q. Do you know the petitioner in this case, Hung Chin Ching? [239]

A. I do.

Q. How long have you known Hung Chin Ching?

A. About fifteen years.

Q. Are you acquainted with one Fook Hing Tong, otherwise known as "Bear" Tong?

A. Yes.

(Testimony of William Centio.)

Q. One of the respondents in this case?

A. Yes.

Q. Calling your attention to the month of October, 1941, were you on the Island of Maui? At the time of the Maui fair? A. I was.

Q. While you were on that island, during the fair, did you have occasion to see Doctor Tong?

A. I did.

Q. Where did you see him first?

A. He was captain in the army.

Q. He was captain in the army?

A. I met him at the camp where he was staying.

Q. While you were on that trip, how long were you on the Island of Maui, at that time, on that occasion? A. About four or five days.

Q. How did you come back to Honolulu?

A. On the boat.

Q. Is there anyone in this room who was on the boat while you were, with you, at the time that you returned? A. Yes, Mr. Ching.

Q. While you were on the Island of Maui, did you see Mr. Ching in the company of Doctor Tong?

A. Yes. [240]

Q. And where was that that you saw the two of them together?

A. At the house on Maui.

Q. Do you recall any conversation between Doctor Tong and Mr. Ching relative to a business venture? A. No.

Q. Do you recall any other conversation at any other place other than at this house? A. No.

(Testimony of William Centio.)

Q. Where else did you see Mr. Ching?

A. Down at the docks.

Q. Did you overhear any conversation between them at the time, at the docks? A. I did.

Q. And what was the substance of that conversation, if you recall?

A. Ching asked Doctor Tong something to the effect of, "What about it?" The doctor, Doctor Tong stated words in the negative that it was no good; it was all out, something to that effect.

Q. Coming back on the boat, did Mr. Ching make any comment to you about his trip to Maui?

A. He did.

Q. What was that comment?

A. He stated that it looked like he made the trip for nothing to Maui.

Mr. Waddoups: Your witness.

Mr. Lee: No questions.

(Witness excused.) [241]

KUI HING TENN

a respondent herein, was recalled, and testified further as follows:

Direct Examination

By Mr. Waddoups:

Q. State your name, please?

A. Kui Hing Tenn.

Q. Are you the same Kui Hing Tenn who testified earlier in this proceeding? A. Yes.

Q. I will call your attention to a statement from the Bank of Hawaii, which appears under the name of Kui Hing Tenn, and ask you to examine it.

A. That is my statement.

Q. Is that a statement of your account with the Bank of Hawaii? A. Yes.

Q. For the month of October, 1941?

A. Yes.

Mr. Waddoups: May we offer this for identification, please?

The Court: It will be received, and marked Respondents' Exhibit 2.

(The document heretofore referred to was marked Respondent's Exhibit 2 and received in evidence.)

(Testimony of Kui Hing Tenn.)

RESPONDENTS' EXHIBIT NO. 2

If No Error is Reported in Ten Days
the Account will be Considered Correct

Bank of Hawaii

In Account With

K. H. Tenn
1927 Coyne Street
Honolulu

Statement of your account to close of business Oct. 20th, 1941.

Checks in Detail	Date	Deposits	Date	Balance
Balance Brought Forward			Sept. 20	258.34
10.00—			Sept. 25	248.34
25.00—	Sept. 29	15,232.60	Sept. 29	15,455.94
15,000.00—	Sept. 30	10,000.00	Sept. 30	10,455.94
127.10—			Oct. 3	10,328.84
	Oct. 4	60.00	Oct. 4	10,388.84
60.00—			Oct. 7	10,328.84
10,000.00—			Oct. 9	328.84
40.00—			Oct. 10	288.84
3.64— 5.95— 3.10—			Oct. 11	276.15
7.72— 66.03—			Oct. 13	202.40
3.40— 10.18—			Oct. 14	188.82
4.35—			Oct. 16	184.47
	Oct. 20	150.00	Oct. 20	334.47

Filed Oct. 12, 1948, Supreme Court T. H.

Received in evidence June 24, 1948, Circuit
Court T. H.

Q. Calling your attention to Respondents' Exhibit 2 for identification, particularly to the deposit after the date of September 29, in the amount of \$15,232.60, please tell the court where the money came from that is represented by that deposit?

A. I had \$10,000 from Fook Hing Tong, and \$5,000 of my own which we had in a safety deposit

(Testimony of Kui Hing Tenn.)

box there, and \$232.60 from my monthly check from the Palama Settlement.

Q. I call your attention to a deposit in the same exhibit, after the date of September 30, for \$10,000, tell us where that came from?

A. This amount came from Chong Hing Tenn. He had a check from Hawaii, so I thought it would be better for me to deposit that money in my account and write a check on that.

Mr. Waddoups: We offer this statement in evidence, your Honor.

The Court: It has been received. It will keep the same marking.

Q. I will call your attention to an order, a charge order on the Bank of Hawaii, dated September 30, in favor of Kam Hoo Lum, charged against K. H. Tenn, No. 1989, in the amount of \$15,000. Will you examine that, please.

The Court: What is the date of that, please?

Mr. Waddoups: September 30.

Q. Do you know what that represents?

A. We wanted a certified check for deposit.

Q. Had that anything to do with the purchase of the Green Mill?

A. Yes. That was the down payment on the Green Mill.

Q. Did you secure a certified check?

A. Yes.

Q. What did you do with that check?

A. I took it to Hiram Fong's office.

Q. Do you remember when you took it? Do you

(Testimony of Kui Hing Tenn.)

recall whether [243] it was the same day that the draft was issued, or another day or when?

A. I believe it was right after that, anyway, within a day or so.

Mr. Waddoups: We offer this in evidence.

The Court: It may be received, marked Respondents' Exhibit 3.

(The document heretofore referred to was marked Respondents' Exhibit 3, and received in evidence.)

RESPONDENTS EXHIBIT NO. 3

[Charge order]

Honolulu, Hawaii, Sep. 30, 1941. No. 1989.

[Stamped]: Exchange Dept.

Bank of Hawaii

Charge K. H. Tenn \$15,000.00

For Check No. 640 in favor of Kam Hoo Lum

Certified this day.

/s/ ILLEGIBLE

Asst. Cashier.

Received in evidence June 24, 1948, Circuit Court T. H.

Filed Oct. 12, 1948, Supreme Court T. H.

(Testimony of Kui Hing Tenn.)

Q. I will call your attention to a cancelled check, dated October 2, 1941, number 643, in the sum of \$10,000, made payable to Kam Hoo Lum, signed K. H. Tenn. Are you familiar with that check? A. Yes.

Q. Has this check anything to do with the purchase of the Green Mill?

A. This check was supposed to be Mr. Tenn's \$10,000 to pay for the balance of the Green Mill.

The Court: That was Chong Hing Tenn?

A. Yes.

Q. Did you deliver this yourself?

A. Yes. I guess so.

Mr. Waddoups: We offer this in evidence.

The Court: Respondents' Exhibit 4.

(The document heretofore referred to was marked Respondents' Exhibit 4, and received in evidence.)

RESPONDENTS' EXHIBIT NO. 4

Honolulu, Hawaii, U. S. A. October 2, 1941 No. 643

Bank of Hawaii 59-102

Pay to the

Order of Kam Hu Lum

\$10,000.00

Ten Thousand dollars only

Dollars

/s/ K. H. TENN.

Mr. Waddoups: You may cross-examine. [244]

(Testimony of Kui Hing Tenn.)

Cross-Examination

By Mr. Lee.

Q. Mr. Tenn, in other words, this \$25,000 was paid about October 1 or 2, to Hiram Fong's office, is that right? A. About that.

Q. Under your testimony? A. Yes.

Q. And at the time already you people had told Hiram Fong to draw up the partnership papers?

Mr. Waddoups: I object to that, improper cross-examination, not covered on redirect examination.

Mr. Lee: I think it goes to the matter of,—

The Court: That is part of the action. Objection overruled.

Q. Isn't that right?

A. I don't know about that, but I think the owners wanted the money in, to show good faith before the drawing up of any papers. I don't know about drawing up the papers, I delivered—

Q. You delivered the money to Hiram Fong's office, their lawyer, didn't you? A. Yes.

Q. The deal was closed when you deposited that money there?

A. I don't know whether it was closed or not. They wanted the money, to transact business. The owners of the Green Mill then wanted to have the money before they would,—

Q. Certainly. I can understand the owners of the Green Mill wanting the money. I can understand that. I can understand, also, the purchasers of any business, when you pay \$25,000, they want

(Testimony of Kui Hing Tenn.)

to own that business. Didn't you people get that business [245] October 2, 1941?

Mr. Waddoups: Calling for a conclusion of the witness, your Honor. All the documentary evidence is in, showing when title to the business was transferred.

Mr. Lee: I will reframe the question, your Honor.

Q. On October 2, 1941, didn't you think that you people had already bought the business when you paid over the check?

A. Well, I think we bought the business, but I don't think we had the business then.

Q. Weren't you people already operating the business? A. On a trial basis.

Q. On a trial basis? A. Yes.

Q. When you paid that money in October 2, 1941, do you recall then that you had already, or you and your brother,—that your impression was that Mr. Fong was instructed to draw up the necessary papers, including the articles of copartnership among the three brothers, and excluding Mr. Ching?

A. I don't know whether he was instructed to exclude Mr. Ching or not. Maybe he was instructed to draw up the papers.

Q. Who instructed him to draw up the papers?

A. I don't know. Maybe Mr. Lum, maybe we left it to him.

Q. You mean that you left it up to Mr. Lum to tell Mr. Fong who the partners where who were purchasing the business?

(Testimony of Kui Hing Tenn.)

A. Well, he knew my brother. So I don't know, maybe they had instructions. I don't know.

Q. As I understand it, Mr. Tenn, you want this court to believe that Mr. Lum told Mr. Fong who the partners were? A. No. No. [246]

Q. In these days? A. No.

Q. Well, who told Mr. Fong, do you know?

A. I don't know.

Q. You don't know; you didn't?

A. I did not.

Q. Did you indicate to Mr. Fong in any way at the time that you gave the two checks, October 2, 1941, as to who the partners were?

A. I did not.

Q. You did not? A. No.

Q. Did you leave that to Mr. Chong Hing Tenn?

A. I don't know.

Q. At the time, October 2, 1941, was Mr. Chong Hing Tenn living in the same house that you were at your dad's place?

A. On the 2nd? I guess he was.

Q. Now, did he know about your delivering this \$25,000 to Mr. Fong for the purchase of this business, when you went over there to purchase it?

A. I guess he did.

Q. In fact, you talked it over with him, didn't you?

A. I don't know. I talked it over with him, I must have had a telephone call from Fong's place, to deliver that money.

Q. Didn't you have a talk with Mr. Chong Hing

(Testimony of Kui Hing Tenn.)

Tenn about it, so that you proceeded to get that money and pay it over to Fong, isn't that right?

A. I don't recall talking it over with him, but we had an understanding that we were going to deliver that money. [247]

Q. When did you have the understanding? When did you reach that understanding?

A. When we put the money in the bank, we have to pay it any time when they called for it.

Q. Was that September 29 that you had that understanding?

A. I understand that we would have to pay that money.

Q. Yes. I know that, but did you have an understanding on September 29 or 30 when this money was deposited, that you had \$15,000; \$10,000 from Bear Tong,—Fook Hing Tong, and \$5,000 from you that was deposited as the bank statement shows September 29, and the bank statement also shows the sum of \$10,000 was deposited, which was identified as Chong Hing's. Did you have that understanding that that \$25,000 was to be paid by the three brothers; that the three brothers would be partners in this business?

A. I wanted to pay that money, to pay for the Green Mill. I didn't understand about the partnership then.

Q. Well, the purchase price was \$25,000, wasn't it? A. Yes. We want to get the business.

Q. Yes, I know. \$15,000 from you and Doctor Tong, and \$10,000 from your brother, makes \$25,000? A. Yes.

(Testimony of Kui Hing Tenn.)

Q. So that you three brothers purchased the business by October 2, 1941, didn't you?

A. Yes.

Q. When Chong Hing Tenn put in the last \$10,000 September 30, 1941, didn't you three have an understanding,—didn't you three brothers have an understanding that you people were the ones who were purchasing the business, that you were the partners in [248] the new business?

A. I guess so.

Q. You think so? A. Yes.

Q. In fact, it is your impression that your brother, Chong Hing Tenn told Mr. Fong that, that the three brothers were the partners in this business, isn't it? A. I don't know if he told Fong that.

Q. You don't know? A. No.

Mr. Lee: No further questions.

(Witness excused.)

Mr. Waddoups: At this time we request the continuance of this case for the purpose of completing our evidence. On the afternoon of June 22, I saw Mr. Arthur Pai at his place of business on Nuuanu,—June 22nd, of this year, meaning the day before yesterday. I questioned him about the matter which we considered very material. I might state that his attitude toward me at the time was somewhat hostile. He gave me no indication of any kind that he planned to go to Maui that night. I did indicate to him, however, that he would be called, and to that end a subpoena was issued. The record now shows,

through the testimony of Mr. Soares, that this witness is on the Island of Maui. We don't know when he will be back.

For the purpose of the continuance, I would like to make an offer of proof as to what he would state. We consider it very material to the issue: Namely, that some time after the blitz, at the time when the bars were closed, the petitioner, [249] Ching stated to him,—Pai,—that it was a lucky thing that he had not put any money in the Green Mill. To that end, your Honor, we will ask that the case be continued.

The Court: Is that all the evidence?

Mr. Waddoups: That's all the evidence.

The Court: That concludes the respondents' case?

Mr. Waddoups: Yes, your Honor.

The Court: I don't presume that the petitioner would stipulate, if called, he would so testify?

Mr. Lee: Well, I don't know. This is a new thing.

The Court: Can counsel advise the court how much rebuttal he would produce, or if he is going to put in any rebuttal, how long it would take?

Mr. Lee: Well, your Honor, from where I sit right now, I don't think there will be very much rebuttal, other than Mr. Ching's, in rebuttal to something Doctor Tong testified to. It would not take more than ten minutes.

The Court: What I would suggest is this: From the return of the high sheriff, and from the statement made by counsel for the respondents as to the attitude of Mr. Pai, it would appear that there is

quite a possibility of Mr. Pai trying to evade service. I would suggest that a new subpoena be issued, and Mr. Pai be subpoenaed returnable at 8:30 on the first secular day after service, and that whatever high sheriff it is given to, report back to counsel for both parties,—Mr. Lee is in town, you can take care of Mr. Castleman,—and that if that time is convenient for both parties to be in court, well and good, if it is not, then the witness may still appear and [250] be ordered to return at such other time as would be proper. Now, either counsel, or both counsel may be here on the return, but I just take it from what has been stated here in court that there is quite a possibility that the witness is endeavoring to outwit service.

Mr. Waddoups: I think that is a splendid way to solve the problem.

Mr. Lee: The only thing your Honor is, as I get it, there is no date certain when we are to meet and conclude the case.

The Court: I have tried to make it as certain as I can. We can't say such and such a day. The idea is this: Suppose that he is served today, that would be for 8:30 tomorrow morning.

Mr. Lee: Why can't you set a date certain, and I can get this case off my mind.

The Court: For the simple reason that it cannot be certain when the witness will be subpoenaed. That is why I am not setting a day certain. We cannot conclude it until we get this witness. We would have the sheriff serve him immediately. That seems

to be the most expeditious way to get it as soon as possible.

Mr. Waddoups: I can state this, for counsel, as soon as I am advised that he has been served, I will certainly notify counsel, and we can set a day that is convenient. We can then wait upon your Honor.

Mr. Lee: Well, as I understand the present status of this case, your Honor, the respondents have rested, save [251] and except the calling of this witness, Pai, save and except this thing that was mentioned as to when the fair took place.

Mr. Waddoups: No. We can't say that we rested. We don't know what the attitude of this witness is. It may be we will have to lay the groundwork for impeachment, and we will have to put witnesses on to impeach him, being perfectly frank with counsel. For that reason I cannot let the record assume that.

The Court: You have no other witnesses at the present time under the situation as you know it that you can call.

Mr. Waddoups: No, your Honor. I have not.

The Court: If the testimony is as you have made your offer of proof, you feel that that would conclude the case.

Mr. Waddoups: Yes, subject to the stipulation that counsel and I will enter into.

Mr. Lee: That is what I want to understand.

The Court: All right. We understand the situation. The court wants to get rid of this as soon as he can, too. I just suggested this course, feeling that it was probably the fastest way.

(Whereupon the matter was adjourned until June 26, 1948, at 9:00 o'clock a.m.) [252]

June 26, 1948, 9:00 o'clock A.M. Session

ARTHUR PAI

called as a witness on behalf of the respondents,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Waddoups:

Q. State your name, please.

A. Arthur Pai.

Q. Where did you live? A. 1617 Kaimuki.

Q. Do you know a man by the name of Fook Hing Tong? A. Yes.

Q. Otherwise known as Bear Tong?

A. Yes.

Q. Do you know a man by the name of Chong Hing Tenn? A. Yes.

Q. Do you know a man by the name of Kui Hing Tenn? A. Yes.

Q. Are you familiar with the premises in Honolulu known as the Green Mill?

A. Yes. On Bethel street.

Q. Do you know a man by the name of Hung Chin Ching? A. Yes.

Q. A sergeant in the police department?

A. Yes.

Q. Do you remember shortly after the so-called blitz having any conversation with Sergeant Ching concerning the Green Mill?

A. I had a few conversations with him.

Q. Do you remember him saying anything about putting money [253] in the Green Mill?

(Testimony of Arthur Pai.)

A. That I don't know, sir.

Q. You don't remember?

A. I don't remember.

Q. Do you deny having said anything about him putting money in the Green Mill to anyone?—I withdraw that question,—Have you ever said, or have you ever told Fook Hing Tong, Chong Hing Tenn, or Kui Hing Tenn that Ching said anything to you about putting money or not putting money into the Green Mill?

Mr. Lee: We object to that. Whatever this man said to the respondents is inadmissible to the issue in this case. He could have told the Tenn brothers that the moon was green.

The Court: This is a matter of laying a foundation, I take it. Objection overruled.

Q. You have never said anything to either of those men about Ching telling you something like that, is that correct? A. Yes.

Q. Do you recall me calling upon you at your place of business on Tuesday, June 22, in the afternoon? A. Yes.

Q. Do you recall me talking to you about this case? A. Yes.

Q. Do you recall me asking you at the time if you had discussed Sergeant Ching's interest in the Green Mill with any of the Tenn brothers?

A. Well, I told you Tong, he asked me to be a witness. I told him I didn't know enough about the case. I told you the same thing. You ask me about

(Testimony of Arthur Pai.)

an incident away back. I told you that I couldn't recall. [254]

Q. That's right. So you deny having made any statement to either of the Tenn brothers about Ching's interest in that business shortly after the war started? A. No.

Q. Did you talk to Mr. Bear Tong?

A. Bear Tong?

Q. —about this case a few days before,—a couple of weeks ago?

A. Well, he came to my house, I believe it was on the 17th, that was Thursday. He came up to my house and asked me to be his witness. I told him to go down to see you. I told him I could not, because I knew him, I knew Ching. And the case, so far as the case was concerned, I didn't know enough to be a witness for either party.

Q. Do you recall telling him at the time that you remembered Ching telling you about it?

A. No, sir.

Q. You didn't want to testify because you knew both parties? A. No, sir.

Q. You deny saying that to Doctor Tong?

A. Yes.

Mr. Waddoups: I think that's all, your Honor.

Cross-Examination

By Mr. Lee:

Q. How long have you known Doctor Tong, Fook Hing Tong?

A. Oh, over,—about 25 years.

(Testimony of Arthur Pai.)

Q. Were you friends with him before you knew Mr. Ching? A. Yes.

Q. How long had you known Hung Chin Ching, approximately? [255]

A. About a little over 10 years.

Q. Would you say that you are a better friend of Doctor Tong's than you are of Mr. Ching, vice versa, or is it the same?

A. Well, I treat everybody the same.

Q. Both friends of yours?

A. Of course. Doctor Tong has been my family doctor for quite a while. When he come up to me, he talked to me as if I was obligated to him, asked me to be a witness, which I could not.

Q. Didn't Doctor Tong also tell you that he wanted you to come to court to testify that Ching told you that he was glad that he didn't put any money into the Green Mill? Didn't Doctor Tong tell you that?

A. Well, he mentioned that to me that he didn't put,—Ching didn't put no money into the Green Mill. After the blitz I was in there one time, and the party that they purchased the place from,—what's his name, Long John,—we were kidding. We were talking, and he told me to kid him that he was a smart man for selling the place because the place was closed up for a while, so far as liquor is concerned.

Q. Now, do you remember, approximately during the months of September and October, 1941, seeing Mr. Ching helping run the place, the Green Mill? A. Yes, that I did.

(Testimony of Arthur Pai.)

Q. Did you go over there and eat and have a drink now and then? A. Yes. I did.

Q. And did you notice who was running the place, just like the owner?

A. Well, I understood that both were to be co-managers. He [256] was the one of them that was working around and trying to build up the place.

Q. Mr. Ching? A. Mr. Ching.

Q. Who was the other fellow?

A. Chong Hing Tenn.

Q. You know Chong Hing Tenn, too, don't you?

A. Yes.

Q. Now, during that period, when Mr. Ching was there, did you notice whether or not he was drinking on the premises? A. At no time.

Q. Do you recall having several conversations with any of the Tenn brothers, concerning Mr. Ching's part in obtaining the purchase of the Green Mill, about that time? Do you recall?

A. Well, in the beginning, when Chong Hing Tenn came down here, he is from the other island, he was looking for a business, and I believe Sergeant Ching went around and found this place, and then took part. I understand that they got together and they purchased the place,—from hearsay.

Q. He told you that Ching,—I mean the Tenn Brothers? A. The Tenn brothers told me.

Q. The Tenn brothers told you that?

A. And Mr. Ching himself told me that.

Q. Do you recall any conversation with the other

(Testimony of Arthur Pai.)

manager, Chong Hing Tenn, about some time in September, 1941, close to that time?

A. Whether or not there was any mention or conversation concerning whether Mr. Ching was to be in the partnership?

Q. No. Purchasing the business. Do you recall anything? [257] In other words, did Mr. Chong Hing Tenn ever talk to you about whether or not Mr. Ching was,—to be frank,—to be ousted from this business? A. That I don't recall.

Q. You could not recall that? A. No.

Q. Did any of the Tenn brothers indicate to you that they were going to,—at the time,—squeeze Mr. Ching out? A. That I couldn't remember.

Q. However, it was your impression, from your conversation with the Tenn brothers and Ching that he was going to be, or that he was one of the purchasers of the business, is that right? A. Yes.

Q. You can't recall whether or not Chong Hing Tenn, or any of the other brothers told you that they were going to squeeze Sergeant Ching out? Try to recall any conversation that you may have had?

A. I can't recall.

Q. That you can't recall? A. No.

Mr. Lee: No further questions.

Redirect Examination

By Mr. Waddoups:

Q. If I understand your testimony, you deny having told any of the Tenn brothers that Ching

(Testimony of Arthur Pai.)

had told you he was glad that he didn't put any money in that business after it was closed up?

A. Yes.

Q. You deny that? A. Yes. [258]

Mr. Waddoups: That's all.

Mr. Lee: That's all.

(Witness excused.) [259]

First Circuit Court,
Territory of Hawaii—ss.

I, Sidney H. Minns, shorthand reporter for the Territory of Hawaii, do hereby certify that I reported in shorthand the testimony taken and proceedings had before the Honorable Willson C. Moore, Circuit Judge, at Honolulu, T. H. in the matter of Hung Chin Ching vs. Fook Hing Tong, et al., No. E-4416, commencing June 21, 1948. That I transcribed the same, and that the transcript hereto annexed is a true and correct transcript of my shorthand notes so taken.

/s/ SIDNEY H. MINNS.

Honolulu, T. H. October 9, 1948. [260]

Friday, July 2, 1948, 9:30 o'Clock A.M.

(Continued argument by Mr. Lee.)

(Argument on behalf of petitioner by D. R. Castleman, Jr.)

(Argument by Mr. Lee.)

The Court: Well, from this evidence it appears that originally there was an agreement between these three brothers and Ching here to go into a joint venture of a partner arrangement for the purchase of the Green Mill, and the uncontradicted evidence is that Ching—the extent of Ching's ownership, was to be three thousand dollars; the purchase price of the business was \$25,000, and in addition to that there was an approximately \$10,000 for the stock in trade, the inventory, and according to the evidence that inventory was paid out of the income of the business, and that none of the parties contributed anything above and beyond their original investment.

It appears that this agreement entered into by the four parties was in the latter part of September, 1941. There is no question about it, either between the members, [261] the seller of the business, or Hiram Fong, that in the first instance, that is, at the beginning of these negotiations, that Ching, the petitioner, was part and parcel of this venture.

Then we come to the steps that followed. It appears that this Dr. Tong had a great deal of faith in Ching and he wanted him to look after his

interest in the partnership of the Green Mill and in addition to having three thousand dollars interest he was to act as manager to some extent, and have charge of personnel. Brother Chong was to take care of the financial situation in the enterprise at issue, bank the money and pay the bills, and what have you.

There is also evidence, in the evidence, that from the time of the meeting of the minds for the sale and purchase of the Green Mill up until the time, at least, of the transfer of the liquor license, which had to be approved by the Liquor Commission, that there was a transient period in which the former owners and the new purchasers were operating the business together.

I think there is a slight conflict in the testimony as to whether Long John, as they call him, got the money out of that period or whether the others got the money. Of course there is no particular materiality to that. However, during that period it does appear that the prospective purchasers were more than satisfied with the agreement they had entered into, and it looked to them as being a very good thing.

From the inception of the operation of the Green Mill by the brothers, of which Chong Hing was the active [262] participant, taken from the testimony and the circumstances, and what eventually ended up, it appears to this Court that Chong Hing was not particularly interested in, and was possibly opposed to, having Ching become a partner in this business. It is apparent from the letter written by

Dr. Tong to his brother, and also the letter to Ching, that he was very insistent that Mr. Ching participate in the partnership. In that particular letter, which is Exhibit "A," Dr. Tong said that he had \$15,000 and that if he, if Ching, would put up the \$3,000, why then [copy obliterated] Just what that means is problematical.

It is apparent that when they come right down to drafting the partnership papers themselves that there was a desire to leave Ching out of the picture.

It is contended by the Tenn brothers that there were at least two reasons for this: 1. That although he had been repeatedly requested to put up his \$3,000 he did not do it, and, second, that his conduct at the Green Mill with reference to drinking, and I believe also there was some intimation that he had too much drinking on the house—that it was not good for the business.

Dr. Tong testifies that he felt that Ching, instead of looking after his interest, and doing what was right, had double-crossed him. What that double-cross was is pretty clear, and taking all the circumstances into consideration this Court arrives at this conclusion with reference to this partnership: It appears that Chong did not want Ching in; he particularly, and he finally prevailed upon his brother, Dr. Tong, to leave him out. And immediately [263] when Ching heard about this, up at Hiram Fong's office, he telephoned Dr. Tong on Maui, and immediately went over to see him and borrowed money

from somebody—borrowed \$75 from somebody, and went to Maui to see about it. In other words, it would appear from his action that he was greatly surprised and chagrined that he was not within the partnership.

Dr. Tong testifies that he was trying to get him to finance it; that is, he, Dr. Tong, to finance Ching. In Ching's testimony he says that he could have borrowed one thousand dollars on land, on his house, and then he provides evidence—he produces some other witnesses here who testified he was agreeable to loaning him \$3,000 without security, and that he had been ready, able and willing at all times to put it up. Ching gives the reason for not having paid the \$3,000, saying that Chong was the person who was making the financial arrangements and had never made any demand upon him.

Well, this Court believes that at the time that this partnership was actually consummated it really amounted to a squeeze-out of Ching, and at that time there is no question in this Court's mind that had Ching proceeded to claim or demand his share that he would unquestionably be entitled to obtain it. He says that he did not want to go into court; that he trusted these gentlemen, and at the time I believe there was testimony to the effect that Dr. Tong told him that he could go into partnership with him in some other business. At any rate, from the time this partnership—or the trip to Maui, around the 12th, we will [264] say, of October, up until December 7th, the day of the blitz, he did

nothing. Well, that is a period of seven weeks. Well, the blitz came along, and of course, as we all know, the bars were closed for a period—the testimony is here, four or five months, and of course they were losing money, not selling anything and still had to pay their rent, and possibly some of their help. Well, Ching, of course, at that particular time, he would not be very interested in putting in money and also at that particular time we were pretty well upset around here, and you could not do very much of anything anyway.

Then there was a lifting of the ban upon the bars, and during the war days it is a matter of common knowledge that the streets of Honolulu were literally swarming with service men and defense workers, and that every bar in town, of which there were a great many, they had a bouncer at the bar to let people in and let people out, and lots of them had to have a chain across the door to help them do that, and practically every bar in town by mid-morning had a line of from 10 to 75, maybe, of service men waiting their turn to get into a bar. A bar was a gold mine, no question about that.

Now that period, we will say from the middle of 1942 and all of 1943, to January the 6th, 1944, when there was a letter written, a demand—and he has also testified in late 1943, which appears to be in all likelihood correct, Mr. Ching went to see Mr. Herbert Lee about his interest in this partnership, and since that time this case was in the courts, and just now coming to trial. [265]

Now with reference to the defense of the statute

of frauds, or with reference to the signing of the lease, the Court does not think anything of that defense at all, because all of the interested parties, including the lessee, the then lessee, Long John and his wife Elsie—were all of the belief and felt that Ching was a member of this partnership. And the partnership has a lease, and they can—you don't have to—in order to change your partners, you don't have to do anything particular about the lease, the new member of the partnership goes on the lease; you either add or subtract the name.

The real question here in this case is whether or not the conduct of Ching in not attempting to seek legal redress before the time he did was laches on his part. Now that is what it amounts to. The Court feels that under the situation, under the conditions that there were at that time, taking everything into consideration, the relationship of the parties and the various positions the persons held, the Court will not consider this as laches, and will order an accounting.

Mr. Waddoups: Then, if your Honor please, we make an application at this time for the privilege of taking an interlocutory appeal to the Court's finding on the subject of the factual situation.

Mr. Lee: I think it is within the discretion of the Court to allow an interlocutory appeal, so I understand it, but it seems to me it would be better for the Supreme Court to have the whole record before them, instead of making the two appeals.

The Court: Well, the accounting is a pretty

long, [266] drawn-out affair, and possibly the record is fairly brief, without the accounting, and the Court is inclined to allow counsel or permit an interlocutory appeal. Possibly it would obviate the necessity, if his contention is correct, of the expenses of an accounting, which the Courts in a case of this kind, where it extends over a period of years, the courts often avoid, if possible, checking over a tremendous amount of figures, and they have to appoint a master to check these figures, and if the Court is right the master takes it on.

Case Closed

I Hereby Certify the above and foregoing, pages 261 to 267, to be a full, true and correct transcript of my shorthand notes taken at the time and place therein stated of the matter herein transcribed.

Honolulu, T. H., July 6, 1948.

/s/ R. N. LINN,

Official Reporter.

[Endorsed]: Filed October 12, 1948.

[Title of Court and Cause.]

SUPREME COURT CLERK'S CERTIFICATE

I, Leoti V. Krone, clerk of the supreme court of the Territory of Hawaii, do hereby certify that the foregoing documents listed in the index hereto attached are full, true and correct copies of the certified copies and of the originals on file in the above-entitled court and cause. I further certify that the transcript of testimony, No. 1077, is a certified copy in accordance with the certificate of the reporters, filed in said court and cause. I further certify that all documents and items listed in said index are attached hereto.

I further certify that the cost of the foregoing transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit is \$122.00, and that the said amount has been paid by the attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the supreme court of the Territory of Hawaii, at Honolulu, this 19th day of December, 1950.

MRS. LEOTI V. KRONE,
Clerk.

[Endorsed]: No. 12784. United States Court of Appeals for the Ninth Circuit. Hung Chin Ching, Appellant, vs. Fook Hing Tong, Chong Hing Tenn and Kui Hing Tenn, Appellees. Transcript of Record. Appeal from the Supreme Court for the Territory of Hawaii.

Filed December 22, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

